TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 643

THE UNITED STATES OF AMERICA, PETITIONER

vs.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO INSURANCE COMMISSIONER OF THE STATE OF FLORIDA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR CERTIORARI FILED DECEMBER 18, 1935

CERTIORARI GRANTED FEBRUARY 3, 1936

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

THE UNITED STATES OF AMERICA, PETITIONER

vs.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO INSURANCE COMMISSIONER OF THE STATE OF FLORIDA, AND NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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A [Caption omitted.]

1 In Circuit Court of the 2nd Judicial Circuit, in and for Leon County, Florida

In Chancery No. 3111

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE OF the State of New Jersey, complainant

vs.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO INSURANCE COMMISSIONER of the State of Florida; and New Jersey Fidelity and Plate Glass Insurance Company, a Corporation Organized Under the Insurance Laws of the State of New Jersey, defendants

Bill of complaint

Filed Dec. 19, 1932

To the Honorable Judges of the Above-Styled Court, in Chancery Sitting:

William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, by his solicitor, Herbert U. Feibelman, brings this his bill of complaint against W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of the State of Florida, of Leon County, Florida, and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the insurance laws of the State of New Jersey, and on the allegations herein set forth prays for the relief hereinafter asked.

1. Complainant shows that he is the Commissioner of Banking and Insurance of the State of New Jersey, and that the department of banking and insurance under said commissioner is liquidating the defendant, New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the insurance laws of
2 the State of New Jersey, upon proper authority of the State of New Jersey, and now has charge of the general assets of said company in New Jersey.

2. The defendant, New Jersey Fidelity and Plate Glass Insurance Company, in order to qualify to do business in the State of Florida, did make application to the Honorable W. V. Knott, as State Treasurer and ex-officio Insurance Commissioner of the State of Florida, and deposited with him securities as required by law, consisting of seventy-five (75) bonds of the State of Vermont, each of the face value of One Thousand Dollars ($1,000.00), and the State Treasurer and ex-officio Insurance Commissioner still has charge and possession of said securities, of the approximate value of Seventy-five Thousand Dollars ($75,000.00), excepting two (2) of said bonds of the face value of Two Thousand Dollars ($2,000.00), which have heretofore

been sold by the State Treasurer to satisfy a judgment under a bond given by the New Jersey Fidelity and Plate Glass Insurance Company in favor of the State of Florida, which did obtain judgment upon the said surety bond.

3. Your complainant would further show that in addition to the liability under the said surety bond in favor of the State of Florida, the defendant, New Jersey Fidelity and Plate Glass Insurance Company, did execute and become liable on criminal and surety bonds in the State of Florida to the amount of approximately Three Hundred and Sixty-five Thousand Dollars ($365,000.00), many of the obligees under which bonds are claiming, and many more of the obligees may claim, participation in the securities held by the Insurance Commissioner as hereinbefore set forth; that a number of judgments have been rendered upon bail bonds, of which the New Jersey Fidelity and Plate Glass Insurance Company is the surety, and the
3 exact nature and amount of these bonds is to this petitioner at this time unknown; that the extent of the liability on these bail bonds cannot at this time be definitely ascertained, and in instances, the liability will be removed by return of the principals to custody; that there are pending a number of suits against the New Jersey Fidelity and Plate Glass Insurance Company, predicated upon the liability of this company on bonds of a civil nature, and if and when judgment is procured in each of these cases, additional rights will be determined to participation in the securities so held by the Insurance Commissioner of the State of Florida; that at this time participation is threatened by a number of obligees under the said surety bonds, which the defendant, New Jersey Fidelity and Plate Glass Insurance Company, has executed, and unless the effort to procure priorities by litigation is prevented in proper manner, the sureties pledged with the State Treasurer and ex-officio Insurance Commissioner as aforesaid will be exhausted, and the fund depleted to satisfy a few at the expense of the many.

4. Your complainant shows that, according to the best possible ascertainment, and according to all information now procurable, the amount now owing by the New Jersey Fidelity and Plate Glass Insurance Company in the State of Florida is greatly in excess of the value of the securities held by the State Treasurer and ex-officio Insurance Commissioner of Florida, as aforesaid.

5. Complainant shows that there are no funds or property in the State of Florida belonging to the defendant, New Jersey Fidelity and Plate Glass Insurance Company, other than that held
4 by the State Treasurer and ex-officio Insurance Commissioner of the State of Florida, as aforesaid, and these funds are inadequate to pay the liability of existing or contemplated claims against such fund.

6. Complainant shows that the Statutes of Florida make no provision for the acts and doings of the Insurance Commissioner in such instances as that by which this matter is now surrounded.

There is no statute directing the State Treasurer and ex-officio Insurance Commissioner how to proceed when the securities held by him are insufficient to pay all of the claims against the surety company or when the surety company is insolvent or has been taken over by the state authorities as in this case.

7. Complainant further shows that it would be inequitable to permit some of the obligees under bonds signed by the defendant, New Jersey Fidelity and Plate Glass Insurance Company, to obtain entire satisfaction through a race of the diligent and at the expense of many obligees who have the unqualified right to pro rata participation in the proceeds of the sale of the said securities held by the State Treasurer and ex-officio Insurance Commissioner of Florida, and unless the Defendant, W. V. Knott, as State Treasurer and ex-officio Insurance Commissioner, is restrained from making any disposition whatever of said securities so entrusted to him, he will be compelled to respond to the demands of those obligees who are first enabled to procure judgments against the defendant, New Jersey Fidelity and Plate Glass Insurance Company, and serve notice upon the State Treasurer and ex-officio Insurance Commissioner of the judgments so obtained.

To the end, therefore, that justice may be done and that all parties interested in the securities involved in this suit may have equity and justice done them, your complainant brings this bill and on the allegations above set forth prays for the relief herein set forth.

PRAYER

Forasmuch, therefore, as this complainant is without remedy in the premises, save in a court of equity, where such matters are properly cognizable, complainant prays:

1. That all parties interested in this matter be required to join herein and be made parties hereto.

2. That the defendants herein be required to make full and complete answer, but not under oath, answer under oath being waived.

3. That an accounting be had to ascertain the relative standing of all the creditors entitled to participate in the funds hereinabove described and that by and under proper orders of the Court such payments shall be made.

4. That a Master be appointed to take the evidence that may be necessary in this cause.

5. That said State Treasurer and ex-officio Insurance Commissioner, Honorable W. V. Knott, be directed to make payment to no person or on no claim without an order of this Court and that he hold the securities subject to the order of this court.

And complainant in duty bound will ever pray, etc.

HERBERT U. FEIBELMAN,
Solicitor for Complainant.

[*Duly sworn to by J. K. Ricketts, jurat omitted in printing.*]

7 In Circuit Court of Leon County

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE OF the State of New Jersey, complainant

vs.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO INSURANCE COMmissioner of the State of Florida; and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the Insurance laws of the State of New Jersey, defendants

Motion to amend bill of complaint

Filed Dec. 19, 1932

Comes now William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, by its Solicitor, Herbert U. Feibelman, and respectfully shows unto the Court that since the preparation of the Bill of Complaint, and after the arrival of the Solicitor at Tallahassee, Florida, he has been advised that the defendant, W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of the State of Florida, has received the following claims to priority in the distribution of the fund created by the deposit of bonds by the defendant, New Jersey Fidelity and Plate Glass Insurance Company, as alleged in the bill of complaint:

1. That certain Order heretofore entered December 14th, 1932, by the Judge of the Circuit Court of the 17th Judicial Circuit in and for Orange County, Florida, requiring the said State Treasurer and Insurance Commissioner to sell sufficient of the securities of the New Jersey Fidelity and Plate Glass Insurance Company

8 pledged with the State Treasurer as ex officio Insurance Commissioner to pay the judgment of R. E. Hinshaw, plaintiff, vs. New Jersey Fidelity and Plate Glass Insurance Company, defendants, No. 9937, for $1,624.39 and $5.65 costs.

2. Seven notices served upon the defendant W. V. Knott as State Treasurer and ex officio Insurance Commissioner by the Honorable W. P. Hughes, United States District Attorney for the Southern District of Florida, of the following judgments in favor of the United States of America in the United States District Court for the Southern District of Florida against the New Jersey Fidelity and Plate Glass Insurance Company, said notices being received by the defendant, the said State Treasurer and ex officio Insurance Commissioner on December 17th, 1932, and referring to the following judgments:

No. 628—M. U. S. Civil—Order of Dismissal. Costs, $17.00.

No. 631—M. U. S. Civil—Order of Dismissal. Costs, $17.00.

No. 667—M. U. S. Civil—Final Judgment, $500, together with $17.00 cost and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

No. 668—M. U. S. Civil—Final Judgment $500, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

No. 677—M. U. S. Civil—Final Judgment $100, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

No. 683—M. U. S. Civil—Final judgment $1,500, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

No. 686—M. U. S. Civil—Final judgment $250, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

Wherefore, the complainant moves the Court for leave to amend the bill of complaint by excepting from the injunctive and restraining order therein prayed for the said judgment in favor of
9 R. E. Hinshaw and the said judgments in favor of the United States of America.

HERBERT U. FEIBELMAN,
Solicitor for Complainant.

[*Duly sworn to by Herbert U. Feibelman, jurat omitted in printing.*]

10 In Circuit Court of Leon County

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE OF the State of New Jersey, complainant

vs.

W. V. KNOTT, AS STATE TREASURER AND EX-OFFICIO INSURANCE COMmissioner of the State of Florida; and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the insurance laws of the State of New Jersey, defendants

Order granting motion to amend bill of complaint

Filed Dec. 19, 1932

This cause coming on to be heard this day upon motion of the Complainant, William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, for leave to amend the bill of complaint, and the defendant, W. V. Knott, as State Treasurer and ex-officio Insurance Commissioner of the State of Florida, having been duly notified and the Court fully advised in the premises it is

Ordered, that the said motion be, and the same is hereby, granted and the bill of complaint is considered amended by excepting from the prayer any injunctive relief or restraint against the following judgments:

1. That certain order heretofore entered December 14th, 1932, by the Judge of the Circuit Court of the 17th Judicial Circuit in and

for Orange County, Florida, requiring the said State Treasurer and Insurance Commissioner to sell sufficient of the securities of the New Jersey Fidelity and Plate Glass Insurance Company pledged with the State Treasurer and ex-officio Insurance Commissioner to
11 pay the judgment of R. E. Hinshaw, plaintiff, vs. New Jersey Fidelity and Plate Glass Insurance Company, defendants, No. 9937, for $1,624.39 and $5.65 costs.

2. Seven notices served upon the defendant W. V. Knott as State Treasurer and ex-officio Insurance Commissioner by the Honorable W. P. Hughes, United States District Attorney for the Southern District of Florida, of the following judgments in favor of the United States of America in the United States District Court for the Southern District of Florida against the New Jersey Fidelity and Plate Glass Insurance Company, said notices being received by the defendant, the said State Treasurer as ex-officio Insurance Commissioner on December 17th, 1932, and referring to the following judgments:

No. 628—M. U. S. Civil—Order of Dismissal. Costs, $17.00.

No. 631—M. U. S. Civil—Order of Dismissal. Costs, $17.00.

No. 667—M. U. S. Civil—Final Judgment $500, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

No. 668—M. U. S. Civil—Final Judgment $500, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

677—M. U. S. Civil—Final Judgment $100, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

No. 683—M. U. S. Civil—Final Judgment $1,500, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

No. 686—M. U. S. Civil—Final Judgment $250, together with $17.00 costs and interest from date of judgment (September 26, 1932 A. D.) at the rate of 8% per annum until paid.

Done and ordered this the 19th day of December, A. D. 1932, at Quincy, Florida.

E. C. Love,
Circuit Judge.

12 In Circuit Court of Leon County

William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, complainant

versus

W. V. Knott, as State Treasurer and Ex-Officio Insurance Commissioner of the State of Florida; and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the insurance laws of the State of New Jersey, defendants

Temporary restraining order

Filed Dec. 19, 1932

This cause came on to be heard upon the bill of complaint herein as amended and the application of the complainant for a restraining order, and it being made to appear to the Court that the said W. V. Knott, as State Treasurer and ex-officio Insurance Commissioner, has had proper notice of this application, and the same having been argued by the solicitor for the complainant, it is

Ordered, adjudged, and decreed, that the said W. V. Knott, as State Treasurer and ex-officio Insurance Commissioner of the State of Florida, be, and he is hereby, restrained and enjoined, until the further order of this Court, from making payment to any person on any claim against the said New Jersey Fidelity and Plate Glass Insurance Company without an order from this court, and
13 that he be, and he is hereby, directed and commanded to hold any and all securities in his hands, possession, custody, and control, deposited with him by said New Jersey Fidelity and Plate Glass Insurance Company, under the provisions of the statutes of this State, subject to the orders of this Court, but nothing herein contained shall affect or in any way restrain the sale of securities and the payment of the required portion of the proceeds of such sale to satisfy the following judgments:

1. That certain order heretofore entered December 14th, 1932, by the Judge of the Circuit Court of the 17th Judicial Circuit in and for Orange County, Florida, requiring the State Treasurer and Insurance Commissioner to sell sufficient of the securities of the New Jersey Fidelity and Plate Glass Insurance Company pledged with the State Treasurer as ex-officio Insurance Commissioner to pay the judgment of R. E. Hinshaw, plaintiff, vs. New Jersey Fidelity and Plate Glass Insurance Company, defendants, No. 9937, for $1,624.39, and $5.65 costs.

2. Seven notices served upon the defendant W. V. Knott as State Treasurer and ex-officio Insurance Commissioner by the Honorable W. P. Hughes, United States District Attorney for the Southern District of Florida, of the following judgments in favor of the United States of America in the United States District Court for the Southern District of Florida against the New Jersey Fidelity and Plate Glass Insurance Company, said notices being received by the defendant, the said State Treasurer as ex-officio Insurance Commissioner on December 17th, 1932, and referring to the following judgments:

No. 628—M. U. S. Civil—Order of Dismissal. Costs, $17.00.

No. 631—M. U. S. Civil—Order of Dismissal. Costs, $17.00.

No. 667—M. U. S. Civil—Final Judgment $500, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

14 No. 668—M. U. S. Civil—Final Judgment $500, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

677—M. U. S. Civil—Final Judgment $100, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

No. 683—M. U. S. Civil—Final Judgment $1,500, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

No. 686—M. U. S. Civil—Final Judgment $250, together with $17.00 costs and interest from date of judgment (September 26, A. D. 1932) at the rate of 8% per annum until paid.

This order shall become effective upon the complainant furnishing bond in the sum of $200.00 Dollars payable to the defendant, W. V. Knott, State Treasurer and ex-officio Insurance Commissioner to pay all damages which he may suffer by reason of this order being improvidently granted.

Done and ordered in Chambers at Quincy, Florida, this the 19th day of December, A. D. 1932.

E. C. LOVE,
Circuit Judge.

15, 16 [Bond on restraining order for $200.00 approved and filed Jan. 6, 1933, omitted in printing.]

17 In Circuit Court of Leon County

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE OF the State of New Jersey, complainant

vs.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO INSURANCE COMmissioner of the State of Florida; and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the insurance laws of the State of New Jersey, defendants

Answer of defendant, W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of Florida

Filed March 2, 1933

Answering the bill of complaint herein, the defendant, W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of the State of Florida, says:

1. This defendant admits the allegations of paragraph 1 of the bill of complaint.

2. This defendant admits the allegations of paragraph 2 of the bill of complaint, except as to the amount of the bonds held by this defendant at the time of the institution of this suit, which had theretofore been deposited by the company. This defendant alleges that the amount of said bonds held by him in his official capacity

18 at the time of the beginning of this suit was approximately $73,000.

3. This defendant is without knowledge of the facts alleged in paragraph 3 of the bill of complaint, except in that this defendant admits that unless the effort to procure priorities by litigation is prevented, the securities pledged with this defendant will be exhausted, and the fund depleted to satisfy a few at the expense of the many.

4. Upon information this defendant believes the facts alleged in paragraph 4 of the bill of complaint to be true.

5. This defendant is without knowledge of the facts alleged in paragraph 5 of the bill of complaint, except that upon information this defendant believes that the funds of the defendant, New Jersey Fidelity and Plate Glass Insurance Company, are inadequate to pay the liabilities of existing or contemplated claims against such fund.

6. Answering paragraph no. 6 of the bill of complaint, this defendant says that the only procedure prescribed by statute for handling deposits made under Section 4339 of the Revised General Statutes of Florida 1920, are those provisions contained in Sections 4339 to 4334 of the Revised General Statutes of Florida of 1920, both inclusive.

7. This defendant admits the allegations of paragraph no. 7 of the bill of complaint.

Respectfully submitted.

W. V. Knott
W. V. KNOTT.
As State Treasurer and ex officio Insurance Commissioner of the State of Florida, Defendant.

Cary D. Landis,
CARY D. LANDIS,
Attorney General.
H. E. Carter,
H. E. CARTER,
Assistant Attorney General.

19 In circuit court of Leon County

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, complainant

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey corporation, and W. V. Knott, as Treasurer of the State of Florida, defendants

Bill of complaint to take charge of assets of insolvent surety company, to distribute same, etc.

Filed May 16, 1933

To the above-styled Court, in Chancery Sitting:

Your complainant, The London Operating Company, a Florida corporation, brings this its bill of complaint against New Jersey

Fidelity & Plate Glass Insurance Company, a New Jersey corporation, and W. V. Knott, as Treasurer of the State of Florida, and complaining of said defendants, says:

1. Your complainant is a corporation duly organized and existing under the laws of the State of Florida; the defendant New Jersey Fidelity & Plate Glass Insurance Company, is a corporation organized and existing under the laws of the State of New
20 Jersey, and authorized to transact business in the State of Florida; the defendant, W. V. Knott, is sued herein in his representative capacity as Treasurer of the State of Florida.

2. That heretofore, to wit, on the 1st day of April 1930, the defendant, New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, transacting a general surety and bond business in said State, and desiring to transact business in the State of Florida, and to offer and undertake to become surety upon bonds executed in the State of Florida, pursuant to Section 6302, of the Compiled General Laws of Florida, 1927, applied for and was granted a certificate of authority to transact business in the State of Florida; and pursuant to the requirements of the laws and statutes of the State of Florida in such cases made and provided, deposited with the Treasurer of the State of Florida, bonds of the United States in the amount of Seventy-five Thousand ($75,000.00) Dollars.

3. That thereafter, upon receiving such certificate of authority to transact business in the State of Florida, the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, began to engage in the general surety business within the State of Florida, and thereafter, on, to wit, the 29 day of January 1932, the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, undertook and did become surety upon a certain supersedeas bond filed in the Circuit Court of the Eleventh Judicial Circuit in and for
21 Dade County, Florida, in Chancery, Cause No. 32055, on which said supersedeas bond the complainant herein was named as obligee and one Harry Masser was named as the principal obligor, and the defendant, New Jersey Fidelity & Plate Glass Insurance Company, was named as surety, which said supersedeas bond was in the sum of Two Thousand ($2,000.00) Dollars, for the payment whereof, the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, as surety, its successors and assigns, bound itself by said presents; said supersedeas bond contained the condition as set forth therein, all of which appears from a true copy of said bond hereto attached, marked "Complainant's Exhibit A", and made a part hereof.

4. That subsequent to the execution of said supersedeas bond by the defendant, New Jersey Fidelity & Plate Glass Insurance Company, as surety, the condition thereof was breached and the complainant in this cause was damaged to the extent of the principal sum named therein, to wit: the sum of $2,000.00; that the said de-

fendant, New Jersey Fidelity & Plate Glass Insurance Company, is now indebted to the complainant in the principal sum of said bond, and your complainant is a creditor of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, in the said amount of $2,000.00; that demand for the payment of said sum has been made upon the defendant, New Jersey Fidelity & Plate Glass Insurance Company, and the same has been refused.

5. Your complainant would now show unto this Court that on the 28th day of May, A. D. 1932, the defendant, New Jersey Fidelity & Plate Glass Insurance Company, was placed in liquidation in the State of its incorporation, to wit, the State of New Jersey, by the Chancery Court in the County of Essex in said State, a Court of competent jurisdiction, and a Deputy Insurance Commissioner
22 of the State of New Jersey has been appointed by said Court to liquidate and dissolve the said defendant, New Jersey Fidelity & Plate Glass Insurance Company; that the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, is now insolvent, and has been so adjudicated by a Court of competent jurisdiction, and the assets of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, have been placed in liquidation in the State of its incorporation.

6. Your complainant is informed and, therefore, alleges that there have been numerous judgments, aggregating many thousand dollars, entered against the defendant, New Jersey Fidelity & Plate Glass Insurance Company, in the State of Florida, upon surety bonds executed by the said defendant pursuant to the certificate of authority to transact business within the State of Florida; that demand for the payment of said judgments has been made upon the defendant, W. V. Knott, as Treasurer of the State of Florida; that in addition thereto, there are numerous claims and suits pending in the Courts of the State of Florida, upon bonds of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, upon which judgment is about to be, or will soon be, entered; that it is essential for the protection of all Florida creditors of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, that this Court assume jurisdiction under Section 6303, of the Compiled General Laws of Florida 1927, as amended, and take charge of the securities and bonds of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, now on deposit with the defendant, W. V. Knott, as Treasurer of the State of Florida, and all of the other assets of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, in the State of Florida, and marshal the
23 same and distribute the same in accordance with law, and in accordance with the priority of the several creditors of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company.

Wherefore, your complainant, being without remedy in the premises, prays:

1. That this Court take jurisdiction over the parties to this cause and the subject matter of this action.

2. That this Court, in accordance with Section 6303 of the Compiled General Laws of Florida for 1927, as amended by Senate Bill No. 288, approved on the 10th day of May, A. D. 1933, appoint its receiver to take charge of the $75,000.00 in bonds of the United States, deposited by the defendant, New Jersey Fidelity & Plate Glass Insurance Company, with the defendant, W. V. Knott, as Treasurer of the State of Florida, and direct said receiver by proper order, in accordance with said law now in effect, to marshal all other assets of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, in the State of Florida, and to take charge of the same; and to direct the said receiver to ascertain as far as practicable the names and addresses of all Florida creditors of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, and the amounts due and owing to such Florida creditors under bonds given by the said defendant, and to notify such creditors to make proof of their claims against said defendant, New Jersey Fidelity & Plate Glass Insurance Company.

3. That this Court, upon the filing of such proofs of claims by the said Florida creditors, determine the validity and the amounts due said Florida creditors by the said defendant, New Jersey Fidelity & Plate Glass Insurance Company.

4. That this Court direct a sale in accordance with law of the said securities of the New Jersey Fidelity & Plate Glass Insurance Company, and the assets thereof marshalled by the said receiver
24 under order of this Court at public or private sale, and on such terms as this Court shall deem proper, and shall direct that upon such sale being made that the proceeds of the same, after paying all costs and expenses, including reasonable counsel fees incurred in connection with this proceeding, as shall be allowed by this Court, be disbursed proportionately among the Florida creditors of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, as is required by law.

5. That pending the final determination of this suit and the distribution of the assets and securities of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, that this Court enter its order that all actions pending in any of the Court of the State against the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, or against the securities and assets of said defendant, New Jersey Fidelity & Plate Glass Insurance Company, be stayed.

STANLEY C. MYERS,
Solicitor for Complainant, Miami, Fla.

[*Duly sworn to by Stanley C. Myers; jurat omitted in printing.*]

25 *Exhibit A to bill of complaint*

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County

In Chancery No. 32055

HARRY MASSER, SOMETIMES CALLED HARRY MESSER AND MORRIS BARON, complainants

vs.

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, defendant

SUPERSEDEAS BOND

Know all men by these presents, That I, Harry Masser, as principal and New Jersey Fidelity & Plate Glass Insurance Company, as surety, are firmly held unto the London Operating Company, a Florida corporation, defendant, in the above-named and stated cause in the sum of two thousand ($2,000.00) dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals on this 29th day of January, A. D. 1932.

Whereas, the said Harry Masser and Morris Baron, complainants in the foregoing cause, instituted said suit and that whereas on the 26th day of January, A. D. 1932, the Honorable Paul D. Barns, Judge of the above-styled cause dismissed said cause without prejudice to the rights of the party, ordered the seventy-five hundred ($7,500.00) dollars deposited in the registry of the court by the complainants to be paid to the defendant and ordered further that the defendant recover of the complainant the costs in said cause; and whereas, the said complainants filed a Notice of Appeal from the order of the Court above mentioned, and whereas, the said

26 Honorable Paul D. Barns upon application made, granted a supersedeas to the complainants to have the effect to suspend the Order of the Honorable Paul D. Barns hereinbefore mentioned, pending the hearing and determination of the said cause in the Supreme Court of Florida;

Now, therefore, the conditions of this obligation, Exhibit A, are that the undersigned shall in the event the said order appealed from, be affirmed or said appeal be dismissed, pay to the said Defendant all costs and damages as may be occasioned by reason of said appeal and supersedeas, also all costs now or as may be hereafter taxed

against complainants herein in this Court, then this obligation to be null and void, otherwise to remain in full force and effect.

HARRY MASSER, *Principal.*
NEW JERSEY FIDELITY & PLATE
GLASS INSURANCE COMPANY,
[CORPORATION SEAL] By RICHARD L. BERENSON, *Surety.*

Taken and approved by and before me this 29th day of January, A. D. 1932.

[COURT SEAL] E. B. LEATHERMAN,
Clerk of the Circuit Court.
By E. W. TRAMMELL,
Deputy Clerk.

27 In Circuit Court of Leon County

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, complainant

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey corporation, and W. V. Knott, as Treasurer of the State of Florida, defendants

Order appointing receiver to take charge of assets, restraining actions, etc.

Filed May 17, 1933

This cause further coming on to be heard upon the verified bill of complaint herein, and upon the complainant's application for the appointment of a Receiver, and this Court having heretofore assumed jurisdiction of this cause and the parties to this action, pursuant to Section 6303, Compiled General Laws of Florida 1927, as amended by Senate Bill 288, Laws of Florida, Acts of 1933, for the purpose of appointing a Receiver to take charge of the assets of the defendant New Jersey Fidelity & Plate Glass Insurance Company, as provided for by law; it is therefore

Ordered, adjudged, and decreed:

1. That D. M. Lowry, of Tallahassee, Fla., be and he is hereby appointed Receiver of the assets of the defendant New Jersey
28 Fidelity & Plate Glass Insurance Company, of every nature and description located and situated in the State of Florida.

2. That said Receiver be and he is hereby authorized and directed to forthwith take charge of the securities of the said defendant New Jersey Fidelity & Plate Glass Insurance Company heretofore deposited by said defendant with the Treasurer of the State of Florida pursuant to section 6202, Compiled General Laws of Florida 1927, and now in the possession and control and custody of the

defendant W. V. Knott, as Treasurer of the State of Florida; and the said defendant, W. V. Knott, as Treasurer of the State of Florida, be and he is hereby directed to deliver and turn over to the said Receiver the said securities of the defendant New Jersey Fidelity and Plate Glass Insurance Company now in his possession and control, and upon complying with this order and delivering and turning over the said securities to the said Receiver, the said defendant W. V. Knott, as Treasurer of the State of Florida, pursuant to law and the statutes of the State of Florida, shall be absolved from all further liability on account of such securities.

3. That said Receiver forthwith marshal all of the assets of the defendant New Jersey Fidelity & Plate Glass Insurance Company in the State of Florida, of every nature and description, and wheresoever the same may be situated within said State, and take charge of the same; and all persons having in their possession, care of custody assets of the said defendant New Jersey Fidelity & Plate Glass Insurance Company, in the State of Florida, be and they are hereby directed to deliver possession of the same to said Receiver.

4. That said Receiver upon marshalling all of the assets of the said defendant New Jersey Fidelity & Plate Glass Insurance Company in the State of Florida, including the securities of the said defendant New Jersey Fidelity & Plate Glass Insurance Company now on deposit with the defendant W. V. Knott as Treasurer of the State of Florida, shall hold the same subject to the further order of this Court and the further decrees to be entered in this cause.

29 5. That said Receiver shall forthwith ascertain, as far as practicable, the names and addresses of all Florida creditors of the said defendant New Jersey Fidelity & Plate Glass Insurance Company, and the amounts due and owing to such Florida creditors under bonds executed by said New Jersey Fidelity & Plate Glass Insurance Company, and said Receiver shall notify such Florida creditors to make proof of their claims against said defendant New Jersey Fidelity & Plate Glass Insurance Company, so that this Court may determine the validity and amounts due the Florida creditors of the said defendant New Jersey Fidelity & Plate Glass Insurance Company.

6. That as heretofore ordered, and until the further order of this Court, all actions heretofore instituted, now pending or which may hereafter be instituted against the said defendant New Jersey Fidelity & Plate Glass Insurance Company, or against the securities of the said defendant now on deposit with the Treasurer of the State of Florida, or against any of the assets of the said defendant in the State of Florida, be and the same are hereby stayed and abated; and all persons and all Florida creditors of the said defendant New Jersey Fidelity & Plate Glass Insurance Company, their attorneys and agents, be and they are hereby restrained and enjoined, until the further order of this Court, from instituting or prosecuting any

actions against the said defendant New Jersey Fidelity & Plate Glass Insurance Company in the Courts of the State of Florida, or against the securities and assets of the said defendant New Jersey Fidelity & Plate Glass Insurance Company located and situated in the State of Florida.

7. That said Receiver shall not pay or incur any costs or expenses of any nature or character whatsoever in connection with this proceeding, unless first authorized and directed by order of this Court.

8. That said Receiver before undertaking his duties as Receiver shall qualify as such by filing in this cause a good and sufficient bond, to be approved by the Clerk of this Court, in the sum of $5,000.00, payable to the Governor of the State of Florida and his successors in office, conditioned upon the faithful performance by the said Receiver of his duties as Receiver, under the terms of this order and in compliance with the further orders and decrees of this Court.

9. That said Receiver after qualifying as such Receiver in this cause, and after taking into his possession the securities of the said defendant New Jersey Fidelity & Plate Glass Ins Company, now on deposit with the defendant W. V. Knott, as reasurer of the State of Florida, shall for safe-keeping deliver the same into the custody of the State Treasurer, and shall take therefor the receipt of the State Treasurer, acknowledging that the said securities are being held by the said State Treasurer for safe-keeping only and as custodian of the same for the said Receiver; and the said Receiver is directed to protect the said securities so left by him for safe-keeping with the State Treasurer against loss by fire, theft, and burglary, by insuring the said securities against such risks in reputable insurance companies in the amount of the face value of said securities.

Ordered, adjudged, and decreed at Tallahassee, Florida, in Chambers, this 17th day of May, A. D. 1933.

JOHN B. JOHNSON,
Judge.

The receiver's bond required by the foregoing order has been filed and approved by me this 18th day of May, A. D. 1933.

PAUL V. LANG,
Clerk of the Circuit Court, Leon County.

In Circuit Court of Leon County

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE of the State of New Jersey, complainant

vs.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO INSURANCE COMMISSIONER of the State of Florida: and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the laws of the State of New Jersey, defendants

Motion for order consolidating causes

Filed May 25, 1933

Comes now the complainant, by his attorney, Herbert U. Feibelman, and respectfully shows unto the Court that since the bill of complaint was filed in this cause and injunction issued, the State of Florida has enacted a law, entitled An Act to Amend Section 4340 of the Revised General Statutes of Florida of 1920, the same being Section 6303 of the Compiled General Laws of Florida, 1927, Relating to Final Judgments Against Surety Companies and Providing for the Disposition of Florida Assets of Such Surety Companies and the Securities Deposited with the State Treasurer under Section 4339 of the Revised General Statutes of Florida of 1920, in Event of Insolvency or Liquidation of said Surety Companies, providing for an equitable distribution of the securities on deposit with the State Treasurer, as prayed for in complainant's bill of complaint, and all the rights and remedies of the complainant have been more clearly set forth and protected in this law.

Complainant further shows that in pursuance of the authority conferred upon all parties in interest by the said law, the
32 London Operating Company, a Florida corporation, did, on or about May 18, 1933, in this court file its bill of complaint seeking to impound and administer equitably amongst creditors the very securities referred to, described and involved in the proceedings instituted by the complainant in the instant cause. The complainant shows that the relief prayed for in the instant proceedings is substantially identical with the relief prayed for in the proceedings invoked by the London Operating Company, by virtue of the law aforesaid; that there is an identity of subject matter and that the proceedings invoked by the London Operating Company probably would not have been possible without the injunction procured in the instant cause, which sought to prevent the consumption of the securities in the satisfaction of diligent parties in interest, to the detriment of all persons interested in the securities hereinbefore mentioned.

Complainant further shows that by the prosecution of both suits, there will be a multiplicity of suits, needless expense and litigation and an unnecessary burden upon the State of Florida, that the pro-

ceeds of the securities will be needlessly consumed, and that delay will ensue.

Complainant further shows that, according to advice supplied by the Attorney General, all of the securities on deposit with the State Treasurer referred to in both suits have not been turned over and delivered to the receiver appointed by this court in the second suit, as contemplated by the said Act of the Legislature; that in order for the letter and spirit of the said law to be carried out, it is essential that all of the securities, together with all the assets of the New Jersey Fidelity and Plate Glass Insurance Company, in Florida, be administered.

Complainant charges, therefore, in consideration of the premises, that equity requires the consolidation of both suits.

Wherefore, complainant moves the court for the entry of an order consolidating the instant cause with that certain cause
33 entitled The London Operating Company, a Florida corporation, Complainant, versus New Jersey Plate Glass & Fidelity Insurance Company, a New Jersey corporation, and W. V. Knott, as Treasurer of the State of Florida, being Case No. 3171, in Chancery, and granting such other relief as to equity may seem meet and proper.

HERBERT U. FEIBELMAN,
Solicitor for complainant.

34 In Circuit Court of Leon County

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE OF the State of New Jersey, complainant

vs.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO INSURANCE COMmissioner of the State of Florida; and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the laws of the State of New Jersey, defendant

Order Consolidating Causes

Filed May 25, 1933

This cause coming on to be heard upon the motion of the complainant to consolidate the instant cause with that certain cause entitled The London Operating Company, a Florida Corporation complainant, versus New Jersey Plate Glass & Fidelity Insurance Company, a New Jersey corporation, and W. V. Knott, as Treasurer of the State of Florida, Case No. 3171, and it appearing unto the court that substantially the same relief is sought in both causes, and that by the consolidation of the causes, needless expense and delay and the multiplicity of suits will be avoided, and the Court being fully advised in the premises, it is

Ordered that the said causes be and the same are hereby consolidated into one and the same cause, and all the orders heretofore

made in the case of London Operating Company versus New Jersey Plate Glass & Fidelity Insurance Company, et al., be and the same are hereby adopted, ratified, and confirmed as the orders in
34–A that certain cause entitled William H. Kelly, Commissioner of Banking & Insurance of the State of New Jersey, versus W. V. Knott, State Treasurer and ex officio Insurance Commissioner of the State of Florida and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the laws of the State of New Jersey, and the two causes will proceed as one.

Done and ordered at Quincy, Florida, this 25th day of May, A. D. 1933.

E. C. LOVE,
Circuit Judge.

34–B In Circuit Court of Leon County

[Title omitted.]

Notice of hearing

Filed May 25, 1933

To STANLEY C. MYERS AND CLAUDE PEPPER, *Attorneys for the London Operating Company, a Florida corporation.* CARY D. LANDIS, *Attorney General for W. V. Knott, State Treasurer.*

You will please take notice that I shall present to the Hon. E. C. Love, Judge of the above-styled Court, at his Chambers in Quincy, Florida, on Thursday, May 25, 1933, at 10:30 A. M., or as soon thereafter as counsel can be heard, the motion which I have prepared in the above matter for the entry of an order consolidating this cause with the cause of The London Operating Company, Complainant, versus W. V. Knott, State Treasurer, etc., and New Jersey Fidelity & Plate Glass Insurance Company.

Kindly govern yourselves accordingly.

(Signed) H. U. FEIBELMAN,
Solicitor for Complainant.

Received a true copy of the above notice this 20 day of May A. D. 1933, together with a copy of said motion.

(Signed) STANLEY C. MEYERS.

34–C STATE OF FLORIDA,
County of Dade, ss:

Marion E. Irvin, being duly sworn, says that she is employed in the office of Herbert U. Feibelman, solicitor for the complainant herein; that on the 20th day of May, A. D. 1933, at 1:00 P. M., she did mail to the Hon. Cary D. Landis, Attorney General for W. V. Knott, as State Treasurer, and to the Hon. Claude Pepper, of counsel for the London Operating Company, a true copy of the

foregoing notice, together with a copy of the motion mentioned therein, enclosed in an envelope addressed to each of them, bearing the requisite amount of postage stamps, addressed as follows:

Hon. Cary D. Landis, Attorney General of Florida, Tallahassee, Florida;

Hon. Claude Pepper, Attorney at Law, Tallahassee, Florida; by depositing said envelopes, properly sealed, stamped, and addressed as aforesaid, in the United States Post Office Box; and that the addresses on the said envelopes are the usual post-office addresses of attorneys.

MARION E. IRVIN.

Sworn to and subscribed before me this 20th day of May, A. D. 1933.

MARGARET TRUSSELL.
Notary Public State of Florida at Large.

My Commission Expires Oct. 10, 1935.

35, 36 In Circuit Court of Leon County

In Chancery

THE LONDON OPERATING COMPANY, A CORPORATION, COMPLAINANT
vs.
NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A CORPORATION, et al., defendants

Decree pro confesso

Filed June 5, 1933

The defendant, New Jersey Fidelity & Plate Glass Company, a Corporation, above named, having been duly served by process of subpoena as will appear by reference to file of said cause, and that it has failed to appear or move to dismiss the Bill of Complaint filed herein, but made default therein; now, on motion of counsel for the complainant, it is hereby ordered and decreed that the Bill of Complaint be taken as confessed, and that the cause be proceeded with ex-parte.

In witness whereof, I have set my hand and the seal of said Court this 5th day of June, A. D. 1933.

PAUL V. LANG, *Clerk.*

[Clerk's certificate to foregoing paper omitted in printing.]

37 In Circuit Court of Leon County

[Title omitted.]

Certificate of service of notice of appointment

Filed June 9, 1933

I, D. M. Lowry, Receiver in the foregoing cause, hereby certify that on the 26th day of May, A. D. 1933, I served notice of my appointment as Receiver upon W. V. Knott, as State Treasurer and Insurance Commissioner, copy of which notice is hereto attached.

This, the 9th day of June, A. D. 1933.

D. M. LOWRY,
As Receiver.

38 [Copy]

MAY 26th, 1933.

Hon. W. V. KNOTT,
State Treasurer as Insurance Commissioner,
Tallahassee, Florida.

DEAR SIR: You are hereby notified that the undersigned was on the 17th day of May, A. D. 1933, duly appointed by decree of the Circuit Court of the Second Judicial Circuit of Florida, in and for Leon County, Florida, as Receiver for New Jersey Fidelity & Plate Glass Insurance Company, pursuant to Senate Bill No. 288, of 1933 session of the Florida Legislature.

You are also advised that all claims of Florida creditors against said Company must be presented to me as such Receiver, together with due proof thereof, on or before one year from the date of my appointment as such Receiver.

You will please acknowledge receipt of this notice.

Very truly yours,

Receiver of New Jersey Fidelity & Plate
Glass Insurance Company.

39 In Circuit Court of Leon County

Nos. 3171, 3111

[Title omitted.]

Petition of intervention of N. R. Robinson

Filed June 14, 1933

To the Honorable Judges of the above-styled court, in chancery sitting:

Comes now N. R. Robinson, and shows unto the Court as follows:

1. That your intervenor is and was at the times hereinafter mentioned, a citizen and resident of the State of Florida.

2. That heretofore on the 16th day of November, 1931, one
40 Bernard Hope, while operating a certain Studebaker automobile upon the public highways of the State of Florida, to wit: on the Tamiami Trail in Collier County, Florida, about one and one-quarter miles west of Dade County line, did negligently and carelessly run into and greatly injure and damage your intervenor; that thereafter your intervenor did enter suit against the said Bernard Hope for such injury in the Circuit Court of Collier County, Florida, which said suit was, by the defendant, removed to the District Court of the United States for the Southern District of Florida, Tampa Division, and thereafter duly transferred from said Tampa Division to the Miami Division of the Southern District of Florida, where the issues filed by the declaration of your intervenor and the pleas filed by the defendant, Bernard Hope, were tried before a jury on or about the 22nd day of December, 1932, when and where a verdict was rendered in favor of the plaintiff and against the defendant, Bernard Hope, in the sum of Five Thousand and no/100 ($5,000.00) Dollars, together with costs of court taxed at $7.50, a certified copy of said judgment being hereto attached and made a part of this intervention, being marked Exhibit "A", reference to which is prayed as often as need may be.

3. That at the time of the injury aforesaid, the said Bernard Hope was the owner of the said Studebaker automobile so, at the time, operated by him and he was, at that time, carrying a policy with New Jersey Fidelity & Plate Glass Insurance Company, insuring the said Bernard Hope against loss on account of injuries or damage he might do in operating said automobile; that said policy was at that time in full force and effect; that the number of said policy is 701846, and carried liability for a single accident up to the sum of $5,000.00; that the provisions of said policy were and are
41 such that your intervenor is entitled to enforce payment of his judgment aforesaid, against the said New Jersey Fidelity & Plate Glass Insurance Company; that your intervenor does not now have the said policy or copy of same, but he will later file said policy or a copy thereof, in this cause and he then asks that it be made a part of this, his intervention.

4. That the said Bernard Hope has not paid the said judgment or any part thereof, nor has the said New Jersey Fidelity & Plate Glass Insurance Company paid the same or any part thereof, although it is obligated so to do by the terms and provisions thereof, and it is liable to your intervenor for the full amount of his said judgment.

5. That the cause of action, resulting in said judgment, arose in the State of Florida and in the County of Collier; that your intervenor was at the time of said injury and prior thereto, and ever since, is, was, and has been a resident of the State of Florida.

6. That at the time of said injury the said Bernard Hope was a nonresident of the State of Florida, his residence and address being 3017 Lyndale Street, Chicago, Illinois.

7. That the said New Jersey Fidelity & Plate Glass Insurance Company at the time of said injury, deposited with the State Treasurer of the State of Florida, bonds and securities as required by law, and your intervenor is advised and believes that it has other property and effects in the State of Florida which will be administered in this cause; that said bonds and securities so deposited with the Treasurer of the State of Florida have been keep and retained by the said Treasurer and are now in his possession and control or in the possession and control of the receiver in this cause.

8. That your intervenor is entitled to have his claim and
42 judgment aforesaid paid from the said bonds and securities heretofore deposited with the State Treasurer of the State of Florida in full or prorate as the case may be, and to participate with other creditors of said New Jersey Fidelity & Plate Glass Insurance Company residing in the State of Florida, or whose claims arose within the State of Florida, and he is likewise entitled to payment from any other assets that may come into the hands of the receiver in this cause.

Wherefore your intervenor prays:

1. That he be allowed to intervene in this cause and set up his claim.

2. That his said claim be declared to be a lien on the bonds and collateral deposited with the said Treasurer as aforesaid, and on any other assets of said New Jersey Fidelity & Plate Glass Insurance Company coming into the hands of the receiver in this cause.

3. That it be decreed by the Court that the said bonds and collateral securities in the possession of the State Treasurer and/or any other assets coming into the hands of the receiver in this cause, be subjected to the payment of the claim of your intervenor.

4. That the court determine the rights and priorities of your intervenor and decree that the claim of your intervenor be paid by the receiver.

5. That your intervenor have such other and further relief as to the court may seem right and proper and as to justice and equity may appertain.

Patterson & Knight.
PATTERSON & KNIGHT.
Solicitors for Intervenor, N. R. Robinson.

43 In the District Court of the United States for the Southern District of Florida, Miami Division

Case No. 1893-M Civil

N. R. ROBINSON, PLAINTIFF

vs.

BERNARD HOPE, DEFENDANT

Final judgment

This cause came on regularly for trial on the 21st day of December, 1932, and a jury having been duly empaneled and sworn, and after evidence submitted and charge of the Court, the jury having returned the following verdict, to wit:

"We the jury find for the plaintiff in the amount of Five Thousand Dollars—so say we all—

"H. P. BROWN, *Foreman.*"

It is therefore considered, ordered, and adjudged that the plaintiff, N. R. Robinson, do have and recover of and from the defendant, Bernard Hope, the sum of Five Thousand & No/100 ($5,000.00) Dollars, together with the costs of court, herein taxed at $7.50, for which said sum let execution issue.

Done and ordered at Miami, in the Southern District of Florida, this 22nd day of December, A. D. 1932.

HALSTED L. RITTER,
District Judge.

PATTERSON & KNIGHT,
414 Seybold Building, Miami, Florida,
Attorney for Plaintiff.

44 *Certified copy*

UNITED STATES OF AMERICA,
Southern District of Florida, ss:

I, Edwin R. Williams, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the annexed and foregoing is a true and full copy of the original Final Judgment, filed Miami, Florida, December 22, 1932, in case number 1893-M-Civil, N. R. Robinson vs. Bernard Hope, now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Miami this 10th day of June, A. D. 1933.

[SEAL]

EDWIN R. WILLIAMS,
Clerk.

By ANNA M. FITZSIMMONS,
Deputy Clerk.

45 [*Duly sworn to by Dewey Knight, jurat omitted in printing.*]

46 *Order*

It is ordered that the foregoing intervention of N. R. Robinson, be filed and that the intervenor be and he is hereby allowed to set up his claim in this cause.

Done and ordered at Tallahassee, Leon County, Florida, this 14th day of June, A. D. 1933.

J. B. JOHNSON,
Circuit Judge.

47 In Circuit Court of Leon County

[Title omitted.]

Petition for rule to show cause

Filed June 16, 1933

Comes now D. M. Lowry, Receiver in the State of Florida for New Jersey Fidelity & Plate Glass Insurance Company, a surety company under the laws of the State of New Jersey and heretofore qualified to do business in the State of Florida, and shows unto the Court that on the 17th day of May, A. D. 1933, said petitioner was appointed as Receiver of the above named company, under decree of the Circuit Court of the Second Judicial Circuit of Florida, in and for Leon County, and that pursuant to said decree the said petitioner did qualify according to the terms of said order and the provisions of law applicable thereto, and is now the duly qualified Receiver, as aforesaid.

That said New Jersey Fidelity & Plate Glass Insurance Company duly qualified under the laws of the State of Florida to conduct the business of a surety company in said State, and in accordance with Section 6302, Laws of Florida, 1927, did deposit with the State
48 Treasurer of the State of Florida, as Insurance Commissioner, the following securities in the face value of Seventy Five Thousand Dollars ($75,000.00):

75 State of Vermont 3¾% Coupon Bonds; Vermont State Loans, issued in 1927:

Nos.	Amount	Due
3071 to 3075, inclusive, 6s $1,000 each	$5,000.00	1941
3316 to 3325, inclusive, 6s $1,000 each	10,000.00	
3566 to 3575, inclusive, 6s $1,000 each	10,000.00	
3821 to 3830, inclusive, 6s $1,000 each	10,000.00	1944
4086 to 4095, inclusive, 6s $1,000 each	10,000.00	1945
4341 to 4350, inclusive, 6s $1,000 each	10,000.00	1946
4631 to 4640, inclusive, 6s $1,000 each	10,000.00	1947
4826 to 4831, inclusive, 6s $1,000 each	6,000.00	1948
4832 to 4835, inclusive, 6s $1,000 each	4,000.00	
Total	75,000.00	

That upon the appointment and qualification of the said Petitioner, the said Respondent, W. V. Knott, as State Treasurer, did turn over to the said Receiver the following securities:

51 State of Vermont 3¾% Coupon Bonds; Vermont State Loans, issued in 1927:

Nos.	Amount	Due
3071 to 3075, inclusive, @ $1,000 each	$5,000.00	1941
3821 to 3830, inclusive, @ $1,000 each	10,000.00	1944
4086 to 4095, inclusive, @ $1,000 each	10,000.00	1945
4341 to 4350, inclusive, @ $1,000 each	10,000.00	1946
4631 to 4640, inclusive, @ $1,000 each	10,000.00	1947
4826 to 4831, inclusive, @ $1,000 each	6,000.00	1948
	51,000.00	

but the said State Treasurer, the Respondent herein, did retain in his possession and custody 20 State of Vermont 3¾% Coupon Bonds; Vermont State Loans, issued in 1927:

Nos.	Amount
3316 to 3325, inclusive, @ $1,000 each	$10,000.00
3566 to 3575, inclusive, @ $1,000 each	10,000.00
	20,000.00

having heretofore sold 4 State of Vermont 3¾% Coupon Bonds; Vermont State Loans, issued in 1927, Nos. 4832, 4833, 4834, and 4835 @ $1,000 each, total $4,000.00.

49 Petitioner further shows unto the Court that prior to his appointment as Receiver there were certain judgments obtained, executions issued and claims filed by various parties in the State of Florida, and by various creditors of the said New Jersey Fidelity & Plate Glass Insurance Company, and the attention of the Respondent, W. V. Knott, called to said claims, and demands made upon the said Respondent to pay said claims and judgments out of the securities then in his hands as the State Treasurer; that Respondent, W. V. Knott, in consideration of the judgments, claims and demands made upon him, as aforesaid, has withheld and now retains the custody of the said State of Vermont 3¾% Coupon Bonds; Vermont State Loans, Nos. 3316 to 3325 inclusive and 3566 to 3575 inclusive, $1,000. each, total $20,000.00, and refuses to deliver same to the Petitioner as Receiver aforesaid.

Petitioner is advised and believes, and upon such information and belief, alleges that notwithstanding said judgments and claims the said Respondent is required by the terms of the order of this Court and the provisions of Senate Bill No. 288, Laws of Florida, 1933, to turn over the securities aforesaid to him, as Receiver, and that the holders of said judgments, claims and demands heretofore made against the Respondent are required, under the law, to present their claims, with legal proof thereof, to the Receiver and that upon the further order of the Court in the premises the said Receiver could be and should be directed to sell said securities to pay said judgments,

claims and demands, as are duly presented and proven and ordered paid by the Court.

The petitioner is informed that the following judgments, claims or demands against the said Company have been called to the attention of the State Treasurer, the exact nature and character of the demands of said parties hereinafter set forth being to the petitioner unknown, to wit:

50 United States Attorney Southern District of Florida, Miami Dade County Solicitor or Sheriff, Miami, Florida.

As herein above set forth, the petitioner alleges that it is his duty under the law to receive the securities aforesaid, and it is the duty of the State Treasurer to turn same over to the petitioner, and it is the duty of the persons residing in the State of Florida, having claims against the said New Jersey Fidelity & Plate Glass Insurance Company, to file such claims, with legal proof thereof, before the Receiver and to abide the further order of the Court in the premises.

Wherefore, the petitioner prays that the Court will make an order directing the said Respondent, W. V. Knott, as State Treasurer of the State of Florida, as Insurance Commissioner, to turn over and deliver to petitioner, as Receiver aforesaid, the State of Vermont 3¾% Coupon Bonds; Vermont State Loans, Nos. 3316 to 3325 inclusive and 3566 to 3575 inclusive, in the amount of $20,000.00 or that he show cause before this Court on a short day to be fixed by order of the Court why he fails and refuses to turn over and deliver to this petitioner the bonds aforesaid.

WALLER & PEPPER,
Solicitors for Petitioner.

51 In Circuit Court of Leon County

D. M. LOWRY, RECEIVER OF NEW JERSEY FIDELITY & PLATE GLASS Insurance Company, a Surety Company, petitioner

vs.

W. V. KNOTT, STATE TREASURER, AS INSURANCE COMMISSIONER OF THE State of Florida, respondent

Rule to show cause

Filed June 16, 1933

The State of Florida to W. V. Knott, State Treasurer, as Insurance Commissioner of the State of Florida, Greeting:

It being made to appear to the Court by the petition of D. M. Lowry, heretofore appointed Receiver in the foregoing cause, that on the 17th day of May A. D. 1933, said petitioner was appointed as Receiver of the above named company, under decree of the Circuit Court of the Second Judicial Circuit of Florida, in and for Leon County, and that pursuant to said decree the said petitioner did

qualify according to the terms of said order and the provisions of law applicable thereto, and is now the duly qualified Receiver, as aforesaid.

That said New Jersey Fidelity & Plate Glass Insurance Company duly qualified under the laws of the State of Florida to conduct the business of a surety company in said State, and in accordance with Section 6302, Laws of Florida, 1927, did deposit with the State Treasurer of the State of Florida, as Insurance Com-
52. missioner, the following securities in the face value of Seventy Five Thousand Dollars ($75,000.00);

75 State of Vermont 3¾% Coupon Bonds; Vermont State Loans, issued in 1927:

Nos.	Amount	Due
3071 to 3075, inclusive, @ $1,000 each	$5,000.00	1941
3316 to 3325, inclusive, @ $1,000 each	10,000.00	
3566 to 3575, inclusive, @ $1,000 each	10,000.00	
3821 to 3830, inclusive, @ $1,000 each	10,000.00	1944
4086 to 4095, inclusive, @ $1,000 each	10,000.00	1945
4341 to 4350, inclusive, @ $1,000 each	10,000.00	1946
4631 to 4640, inclusive, @ $1,000 each	10,000.00	1947
4826 to 4831, inclusive, @ $1,000 each	6,000.00	1948
4832 to 4835, inclusive, @ $1,000 each	4,000.00	
Total	75,000.00	

That upon the appointment and qualification of the said petitioner, the said Respondent, W. V. Knott, as State Treasurer, did turn over to the said Receiver the following securities:

51 State of Vermont 3¾% Coupon Bonds; Vermont State Loans, issued in 1927:

Nos.	Amount	Due
3071 to 3075, inclusive, @ $1,000 each	$5,000.00	1941
3821 to 3830, inclusive, @ $1,000 each	10,000.00	1944
4086 to 4095, inclusive, @ $1,000 each	10,000.00	1945
4341 to 4350, inclusive, @ $1,000 each	10,000.00	1946
4631 to 4640, inclusive, @ $1,000 each	10,000.00	1947
4826 to 4831, inclusive, @ $1,000 each	6,000.00	1948
	51,000.00	

but the said State Treasurer, the Respondent herein, did retain in his possession and custody

20 State of Vermont 3¾% Coupon Bonds; Vermont State Loans, issued in 1927:

Nos.	*Amount*
3316 to 3325, inclusive, @ $1,000 each	$10,000.00
3566 to 3575, inclusive, @ $1,000 each	10,000.00
	20,000.00

having heretofore sold 4 State of Vermont 3¾% Coupon Bonds, Vermont State Loans, issued in 1927, Nos. 4832, 4833, 4834, and 4835 @ $1,000.00 each, total $4,000.00.

53 Petitioner further shows unto the Court that prior to his appointment as Receiver there were certain judgments obtained, executions issued, and claims filed by various parties in the State of Florida, and by various creditors of the said New Jersey Fidelity & Plate Glass Insurance Company, and the attention of the Respondent, W. V. Knott, called to said claims, and demands made upon the said Respondent to pay said claims and judgments out of the securities then in his hands as the State Treasurer; that Respondent, W. V. Knott, in consideration of the judgments, claims, and demands made upon him, as aforesaid, has withheld and now retains the custody of the said State of Vermont 3¾% Coupon Bonds: Vermont State Loans, Nos. 3316 to 3325, inclusive, and 3566 to 3575, inclusive, @ $1,000.00 each, total $20,000.00 and refuses to deliver same to the petitioner as Receiver aforesaid.

Petitioner is advised and believes, and upon such information and belief, alleges that, notwithstanding said judgments and claims, the said Respondent is required by the terms of the order of this Court and the provisions of Senate Bill No. 288, Laws of Florida, 1933, to turn over the securities aforesaid to him, as Receiver, and that the holders of said judgments, claims, and demands heretofore made against the Respondent are required, under the law, to present their claims, with legal proof thereof, to the Receiver and that upon the further order of the Court in the premises the said Receiver could be and should be directed to sell said securities to pay said judgments, claims, and demands, as are duly presented and proven and ordered paid by the Court.

The petitioner is informed that the following judgments, claims, or demands against the said Company have been called to the attention of the State Treasurer, the exact nature and character of the demands of said parties hereinafter set forth being to the petitioner unknown, to wit:

As hereinabove set forth, the petitioner alleges that it is his duty under the law to receive the securities aforesaid, and it is the duty of the State Treasurer to turn same over to the petitioner, and it is the duty of the persons residing in the State of Florida, having claims against the said New Jersey Fidelity & Plate Glass Insurance Company, to file such claims, with legal proof thereof, before the Receiver, and to abide the further order of the Court in the premises.

Wherefore, you, W. V. Knott, as State Treasurer of the State of Florida, and Insurance Commissioner of the State of Florida, are hereby directed to turn over and deliver to D. M. Lowry, as Receiver in the foregoing cause the said State of Vermont 3¾% Coupon Bonds; Vermont State Loans, Nos. 3316 to 3325 inclusive, and 3566 to 3575, inclusive, @ $1,000 each, totalling $20,000.00 or that you, or the holder of any judgment of claim against said New Jersey Fidelity & Plate Glass Insurance Company, show cause for your

failure so to do, before this Court on the 26th day of June 1933, at ten o'clock, A. M., at the County Court House at Tallahassee, Florida.

A copy of this rule shall forthwith be served upon the parties hereinabove named, whose judgments or claims are on file in the office of the State Treasurer and Insurance Commissioner, and upon such other parties as have brought notice of their judgment or claim to the attention of the State Treasurer.

Witness, the Honorable John B. Johnson, one of the Judges of said Circuit Court of the Second Judicial Circuit of Florida, and the seal of said Court, at Tallahassee, Florida, this the 16th day of June, A. D. 1933.

[SEAL] J. B. JOHNSON,
Judge.

Attest:

PAUL V. LANG,
Clerk Circuit Court, Leon County, Florida.

55 STATE OF FLORIDA,
County of Leon:

On this day personally appeared before me, a notary public in and for the State of Florida at large, Katherine Hovermale, who, being by me first duly sworn, deposes and says that she is a stenographer in the law offices of Waller & Pepper, of counsel for the Receiver in the above entitled cause; that she did on the 16th day of June, 1933, serve the foregoing rule to show cause upon the United States Attorney, Southern District of Florida, and upon the Dade County Solicitor and the Sheriff of Dade County, Florida, by placing a true and correct copy of said rule in an envelope fully and legibly addressed to United States Attorney Southern District of Florida, Miami, Florida, by placing a true and correct copy of said rule in an envelope fully and legibly addressed to Dade County Solicitor, Miami, Florida, and by placing a true and correct copy of said rule in an envelope fully and legibly addressed to Sheriff of Dade County, Miami, Florida, by securely sealing each of said envelopes, placing the full legal postage thereon to insure its safe delivery and by depositing each of said envelopes in the United States Post Office, Tallahassee, Florida, on the date aforesaid.

KATHERINE HOVERMALE.

Sworn to and subscribed before me this 16th day of June, A. D. 1933.

[SEAL] KATHLEEN WATTS,
Notary Public State of Florida at Large.

My commission expires 6/5/34.

56 I, W. V. Knott, as State Treasurer and Insurance Commissioner of the State of Florida, do hereby accept service of the foregoing rule to show cause, and acknowledge receipt of a true and correct copy thereof. W. V. KNOTT,

State Treasurer and Insurance Commissioner.

JUNE 16, 1933.

57 In Circuit Court of Leon County

[Title omitted.]

Petition for leave to intervene and file proof of claim and priority

Filed June 16, 1933

Comes now Jay-Thorpe, Inc., a New York corporation, duly and regularly licensed to do business in the State of Florida, by its undersigned solicitor, and respectfully shows unto the Court that in a certain cause, tried in the Civil Court of Record in and for Dade County, Florida, case No. 13035, wherein Jay-Thorpe, Inc., a New York corporation, was plaintiff, Robert S. Mebane was defendant, and the New Jersey Fidelity & Plate Glass Insurance Company was the surety on a forthcoming bond, a final judgment was entered against the defendant and against the said surety on the 11th day of April, 1933, by the Honorable Judge A. B. Small, Judge of the said Court, for the sum of $708.23, together with costs in the sum of $26.95; that the said judgment has remained unpaid for more than thirty days since the rendition of the same and although demand has been made upon the agents of the said surety company, the said surety company has failed to pay the same.

Your petitioner would further show unto the Court that heretofore an injunction was granted against W. V. Knott as Treas-
58 urer of the State of Florida, enjoining him from selling and disposing of any of the bonds deposited by the aforesaid surety with him, in compliance with the laws of the State of Florida, and that your petitioner has served notice upon the said Honorable W. V. Knott by letter, dated June 12, 1933, of the facts hereinabove set forth.

Wherefore your petitioner respectfully petitions the Court to grant an order allowing it to intervene in the above suit, and to file its proof of claim and such pleadings as may be necessary to present before this Honorable Court its claim of priority over the general creditors of the said surety company, whose claims have not been reduced to judgment.

Respectfully submitted.

ROLAND W. GRANAT,
Solicitor for Petitioner.

Service of a copy of the foregoing petition acknowledged this 14 day of June 1933.

STANLEY B. MYERS,
Solicitor for Complainant.

59 In Circuit Court of Leon County

[Title omitted.]

Petition to declare priority of claim

Filed June 20, 1933

Comes now Jay-Thorpe, Inc., a New York corporation, duly and regularly licensed to do business in the State of Florida, by its undersigned solicitor, and respectfully shows the Court that it obtained a final judment in the Civil Court of Record in and for Dade County, Florida, against the defendant, the New Jersey Fidelity & Plate Glass Insurance Co., in the sum of $708.23, principal and interest, and $26.95 costs, a certified copy of which judgment is attached hereto and asked to be taken as a part hereof; that the said judgment has not been paid, satisfied, or released, or any part thereof, and that the same remains due and unpaid for more than thirty days from the date of rendition; that the Honorable W. V. Knott, Treasurer of the State of Florida, has been duly notified, according to the law and statutes in such case made and provided for, of the nonpayment of the said claim for more than thirty days after rendition of the same.

Wherefore your petitioner respectfully moves the Court to
60 enter an order declaring that the claim of your petitioner is a preferred claim and entitled to payment out of the proceeds of the sale of the assets of the said New Jersey Fidelity & Plate Glass Insurance Co. at such time as the Court may direct the payment of the same.

Attached hereto is the affidavit of the undersigned solicitor, verifying this petition in so far as the nonpayment of the judgment is concerned.

Respectfully submitted.

ROLAND W. GRANAT,
Solicitor for Petitioner.

61 *Exhibit to petition*

In the Civil Court of Record, Dade County, Florida

No. 13035

JAY-THORPE, INC., A NEW YORK CORPORATION, PLAINTIFF

vs.

ROBERT S. MEBANE, DEFENDANT

New Jersey Fidelity & Plate Glass Insurance Co., surety on forthcoming bond

FINAL JUDGMENT

This cause coming on for trial and a Jury of six true and lawful men, having been first duly sworn to try the issues in the above styled cause, and the said Jury having heard the testimony and

evidence offered in behalf of the plaintiff and the defendant herein, having failed to appear, and having been duly instructed by this Court as to the law applicable to the case at bar, the said Jury returned a verdict in words and figures as follows:

"We, the Jury, find for the plaintiff and assess his damages at $649.75 principal, $58.48 interest, and further find that the property released to the defendant, Robert S. Mebane, on the forthcoming bond exceeds in value the amount of the verdict against defendant, Robert S. Mebane. So say we all.

"Dated at Miami, Florida, this 7th day of April 1933.

"FRANK W. DENNY,
"*Foreman.*"

It is therefore considered, ordered, and adjudged that the plaintiff, Jay-Thorpe, Inc., do have and recover of and from the defendant, Robert S. Mebane, and the New Jersey Fidelity and Plate Glass Insurance Company, the sum of $708.23, total of principal and interest, together with the costs of this action taxed by the Clerk herein at $26.95, for the aggregate sum of which Judgment is hereby given the plaintiff against the defendant and said Surety which let execution issue.

Done and ordered in open Court this 11th day of April 1933.

62

A. B. SMALL,
Judge.

A true copy of the Original on File in the Clerk's Office. Witness my hand and Official Seal, this 14th day of June, A. D. 1933.

[SEAL]

GEORGE F. McCALL,
Clerk Civil Court of Record.
By E. M. GALLEBEATTE, Jr.,
D. C.

AFFIDAVIT

STATE OF FLORIDA,
County of Dade:

Before me, the undersigned authority, personally appeared Roland W. Granat, who, upon oath taken by and before me, deposes and says that he is the attorney, solicitor, and resident agent for Jay-Thorpe, Inc., a New York corporation; that on April 11, 1933, Jay-Thorpe, Inc., obtained a judgment against Robert S. Mebane, as defendant, and the New Jersey Fidelity and Plate Glass Insurance Company as surety on a forthcoming bond, in the Civil Court of Record in and for Dade County, Florida, in the sum of $708.23, and $26.95 costs, all of which remains due and unpaid and that no portion of the same has ever been paid by either the defendant or the aforesaid surety.

ROLAND W. GRANAT,
Deponent.

Sworn to and subscribed, before me this 19th day of June 1933.

[SEAL]

MARY J. CLEARE,
Notary Public.

My commission expires Aug. 11, 1933.

63 In Circuit Court of Leon County

[Title omitted.]

Return to rule to show cause

Filed June 23, 1933

The respondent, W. V. Knott, State Treasurer, as Insurance Commissioner of the State of Florida, for return to the rule to show cause issued by the Honorable J. B. Johnson, Circuit Judge, in the above-entitled cause, on the 16th day of June, A. D. 1932, respectfully shows unto the Court as follows:

This respondent admits the recitals of the rule to show cause as to the qualification of the surety company for which petitioner was appointed receiver, and that the said company deposited with this respondent securities of the face value of $75,000 as alleged. It is further admitted that this respondent turned over to the petitioner the securities in said rule to show cause mentioned, and respondent admits withholding from the receiver that part of said securities as in said rule to show cause specified, and for the reasons therein stated.

Respondent denies that he is required by the provisions of Senate Bill No. 288, Laws of Florida, Acts of 1933, to turn over the securities withheld to the petitioner, and denies that the holders of said judgments for which said securities were and are withheld are required under the law to present their claims with legal proof thereof to the receiver as other claims are required to be presented

64 to and proved before said receiver.

Respondent is informed and believes and so alleges that the judgment creditors, notice of which was served on respondent prior to the adjudication of insolvency and appointment of the said receiver, and for which said securities were and are withheld by this respondent, have a claim and lien on said securities so withheld in dignity to all other claims thereto or liens thereon, and respondent believes and so alleges that it is his duty to continue to withhold said securities from the petitioner subject to said judgments mentioned and referred to in the rule to show cause.

Respondent alleges that under Senate Bill 288 it is not mandatory that the Court require securities deposited with the State Treasurer under Section 6302 of the Compiled General Laws of Florida 1927, to be turned over to the receiver appointed by the court until all claims are proven and the receiver is ready to make sale thereof for the purpose of payment of proven claims.

Respondent shows unto the Court that under Section 6302 of the Compiled General Laws of Florida:

"For the bonds so deposited, the faith of the State of Florida is pledged that they shall be returned to the party or parties entitled to receive the same."

And the State of Florida through the State Treasurer as its agent should not be required to part with the custody of such securities unless and until claims are proven to be entitled to participate therein, and until an order of the Court directing that the same be sold to satisfy such claim.

Respectfully submitted.

W. V. Knott.
W. V. KNOTT,
State Treasurer as Insurance Commissioner of the State of Florida, Respondent.

65 Cary D. Landis.
CARY D. LANDIS,
Attorney General.

H. E. Carter.
H. E. CARTER,
Assistant Attorney General for Respondent.

66 In Circuit Court of Leon County

[Title omitted.]

Answer of defendant W. V. Knott, as Treasurer of the State of Florida

Filed July 3, 1933

Answering the bill of complaint herein, the defendant W. V. Knott, as Treasurer of the State of Florida, says:

1. This defendant admits the allegations of paragraph numbered 1 of the bill of complaint.

2. This defendant admits the allegations of paragraph numbered 2 of the bill of complaint, except that he alleges that pursuant to the requirements of the laws and statutes of the State of Florida in such cases made and provided, the defendant New Jersey Fidelity & Plate Glass Insurance Company, deposited with the Treasurer of the State of Florida 75 State of Vermont 3 and 3¼% coupon bonds; Vermont State loans, issued in 1927, in the total amount of $75,000.

67 3. This defendant admits that the defendant New Jersey Fidelity & Plate Glass Insurance Company began to engage in the general surety business within the State of Florida, but as to the other facts alleged in numbered paragraph 5 of the bill of complaint, this defendant neither admits nor denies the same, but states that he is without knowledge thereof.

4. This defendant neither admits nor denies the allegations of paragraph 4 of the bill of complaint, but states that he is without knowledge concerning the same.

5. This defendant admits the allegations of paragraph 5 of the bill of complaint.

6. Upon information this defendant is informed and believes to be true the allegations in numbered paragraph 6 of the bill of complaint, but alleges that this defendant as Treasurer of the State of Florida can pay said judgments only out of the securities pledged with him.

7. Further answering said bill of complaint, this defendant alleges that he is willing to abide by any orders of the Court made herein, but states that Senate Bill No. 288, approved May 10, 1933, and being amendatory of Section 4340, Revised General Statutes of Florida of 1920, the same being Section 6303 of the Compiled General Laws of Florida 1927, does not require that a receiver appointed pursuant thereto take into his possession the securities
68 deposited with this defendant as aforesaid, except as and when it is determined by the Court that a sale thereof should take place; and this defendant prays that the above Court in the exercise of its discretion allow the said securities to remain in his possession until such time, inasmuch as by Section 6302, Compiled General Laws of Florida 1927, the faith of the State of Florida was irrevocably pledged that the securities so deposited should be returned to the party or parties entitled to receive the same.

8. Further answering said bill of complaint, this defendant alleges that judgment creditors of the said New Jersey Fidelity & Plate Glass Insurance Company, who had served this defendant with notice of their judgments prior to the insolvency proceedings and/or the appointment of a receiver herein, became entitled to a specific lien upon said securities so deposited with this defendant, and that as to such this defendant respectfully prays that he be entitled to keep the same in his possession in order to satisfy such specific lien.

Respectfully submitted this 3rd day of July 1933.

W. V. Knott,
W. V. KNOTT,
As State Treasurer of the State of Florida.

Cary D. Landis,
CARY D. LANDIS,
Attorney General.
H. E. CARTER,
Assistant Attorney General.

69 In Circuit Court of Leon County

Petition to direct State Treasurer to turn over certain cash and matured coupons.

Filed July 18, 1933

Comes now D. M. Lowry, Receiver of New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, and shows unto the Court that in the discharge of his duties as Re-

ceiver various and sundry expenses have been incurred by said Receiver and by his said attorneys, in the purchase of postage, stationery, telephone and telegraph bills, and traveling expenses; that the said Receiver has procured insurance on the securities deposited by the said surety company with the Treasurer of the State of Florida, as directed by the Court in its order heretofore made, and that there is due and unpaid the insurance premium thereon in the sum of $298.45, and that the said Receiver is without any funds for the payment of these and other expenses; that other expenses will accrue from time to time; that the State Treasurer has in his possession, as assets of the said New Jersey Fidelity & Plate Glass Insurance Company, the following: Cashier's checks totalling $3,654.11, and interest coupons, which matured June 1st, 1933, totalling $1,331.25; that it is, therefore, expedient and necessary that a portion of said funds should be turned over by the State Treasurer to the Receiver to be used in paying the expenses heretofore accrued and to hereafter accrue in said receivership.

70

Wherefore, he prays that the Court will make and enter an order authorizing and directing the State Treasurer to turn over to the Receiver said funds, or a sufficient amount thereof as the Court may determine, to be used by the Receiver for the purposes aforesaid. The Receiver further suggests the advisability of converting the said coupons into cash and prays the Court to make and enter an order either directing the State Treasurer to turn over the said coupons to him, as Receiver, or directing the State Treasurer to take steps to convert said coupons into cash pending the further order of this Court.

D. M. LOWRY,
Receiver.

Copy of the foregoing petition received and the matter submitted to the Court without further notice for such order as the Court deems advisable.

This the 17th day of July, A. D. 1933.

W. V. KNOTT,
State Treasurer.

71 In Circuit Court of Leon County

Order directing State Treasurer to turn over certain cash and matured coupons

Filed July 18, 1933

This cause coming on this day to be heard upon the petition of D. M. Lowry, Receiver for New Jersey Fidelity & Plate Glass Insurance Company, to direct W. V. Knott, as Treasurer of the State of Florida, to turn over to the said Receiver certain interest coupons and funds, to wit: Cashier's checks totalling $3,654.11, and interest

coupons which matured June 1st, 1933, totalling $1,331.25, in possession of the State Treasurer, belonging to said surety company, for the purpose of placing the said Receiver in funds to pay current expenses of said receivership, and otherwise, and it appearing that copy of the petition has been duly served upon the State Treasurer, who has accepted service thereon, and it appearing to the Court that certain expenses of said receivership have been incurred, which it is necessary to pay, and that it is deemed more advisable to pay same out of the interest coupons and funds on hand, rather than
72 sell the securities otherwise deposited with the State Treasurer.

It is therefore, accordingly, ordered, adjudged, and decreed that W. V. Knott, as Treasurer of the State of Florida, do surrender and turn over to the said D. M. Lowry, as Receiver for New Jersey Fidelity & Plate Glass Insurance Company, the interest coupons and cashier's checks above described, upon the said D. M. Lowry, as Receiver, executing and delivering to the said State Treasurer a receipt therefor.

It is further ordered that the said D. M. Lowry, as Receiver, do present said interest coupons and checks for collection and to take such steps as are necessary for the collection of same, and the conversion into cash.

It is further ordered that the said Receiver, before paying any of the expenses, do submit a report to this Court showing the expenses incurred for the further order of the Court thereon.

Done, ordered, adjudged, and decreed in Chambers, at Tallahassee, Florida, this the 18th day of July, A. D. 1933.

J. B. JOHNSON,
Circuit Judge.

73 In Circuit Court of Leon County

[Title omitted.]

Claim of Hernando State Bank, of Brooksville, Florida

Filed Aug. 2, 1933

Comes now Hernando State Bank, of Brooksville, Florida, a corporation, and would show that it is the owner and holder of a claim against the New Jersey Fidelity & Plate Glass Insurance Company, a corporation, in the principal sum of One Thousand Dollars ($1,000), with interest thereon from February 5, 1932, at eight percent (8%) per annum; that the same is represented by promissory note of the Empire Realty Securities Corporation, dated February 5, 1932, payable on or before June 1st, 1932, to the order of The Widening Company, in the amount of Five Hundred Dollars ($500.00), and thereafter endorsed and delivered to this claimant, and a promissory note by the same maker, to the same payee, in the amount of Five Hundred Dollars ($500.00) dated February 5,

1932, payable June 15, 1932, and likewise endorsed and delivered to plaintiff, and also two separate bonds by New Jersey
74 Fidelity & Plate Glass Insurance Company, a corporation, guaranteeing payment of said notes and interest; copies of said notes and bonds being hereto attached, as Exhibits "A", "B", "C", and "D", respectively.

Claimant further shows that it instituted suit against said defendant on the 30th day of December 1921, which said suit is now pending in the Circuit Court of Hillsboro County, Florida.

Claimant would further show that it holds no other security or collateral for said claim; that there are no off-sets whatsoever against the same, and that this claimant is the legal owner and holder of the said notes and bonds, representing the said claim.

HERNANDO STATE BANK,
By JOHN O. PERRY,
Vice Pres.

[*Duly sworn to by John O. Perry, jurat omitted in printing.*]

Exhibit A

[Copy]

MIAMI, FLORIDA, *February 5th, 1932.*

No. 2, $500.00.
Pro. Fee, 2.00.

On or before June 1st, 1932, after date, for value received we promise to pay to the order of The Widening Company Five Hundred and No/100 Dollars Payable at First National Bank, of Miami, Florida, with interest thereon at the fate of 8 percent per annum from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of nonpayment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 percent per annum, payable semiannually.

EMPIRE REALTY SECURITIES CORPORATION [SEAL]
By F. H. RAND, JR., [SEAL].
President.

[CORPORATE SEAL]

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

Due ——.

1320

193

Endorsed across face of note: Miami, Fla. June 1, 1932. Protested for nonpayment Lena Brunson, Notary Public. Fee, $2.00.

Endorsed on back of note: The Widening Company, By F. J. Rand, Jr., President. Miller O. Phillips.

5 documentary stamps for 10¢ each—cancelled.

76 *Exhibit B*

[Copy]

Know All Men By These Presents: That Empire Realty Securities Corporation, a Corporation, etc. as Principal, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc. as Surety, are held and firmly bound unto The Widening Company, a corporation, etc. hereinafter called the Obligee, its successors and/or assigns, in the penal sum of Five Hundred ($500.00) Dollars, for the payment of which sum well and truly to be made, the Principal and Surety do hereby bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 5th day of February, 1932.

The condition of this obligation is such that: Whereas, Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of Five Hundred ($500.00) Dollars, payable on or before June 1st, 1932, after date, to the order of The Widening Company, which promissory note is in words and figures as follows, to-wit:

MIAMI, FLORIDA, *February 5th, 1932.*

No. 2, $500.00.

On or before June 1st, 1932, after date, for value received, we promise to pay to the order of The Widening Company, Five Hundred and No/100 Dollars, payable at First National Bank of Miami, Florida, with interest thereon at the rate of 8% per annum, from date until fully paid. Interests payable semi-annually. The maker and endorser of this note further agrees to waive demand, notice of non-payment and protest and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent. per annum payable semi-annually.

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, Jr., *President.*

And whereas, the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as to principal and interest, upon demand of the Obligee, or the assignee of the Obligee, in the event the said note be not fully paid by the Empire Realty Securities Corporation at its maturity.

Now, if the above described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void; else same shall remain in full force and effect.

A condition of this bond is that no assignment or endorsement of the above described note shall in any way relieve the Surety from its obligation to pay said note in accordance with the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass to the assignee, payee, endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

77 Witness the hand and seal of the Principal and Surety this day and year first above written.

EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, Jr., *President.*

As Principal.

[Seal—Empire Realty Securities Corporation.]

NEW JERSEY FIDELITY & PLATE GLASS
INSURANCE COMPANY,
By E. L. SEMPEL, *Attorney in Fact.*

As Surety.

[Seal—New Jersey Fidelity & Plate Glass Insurance Company.]

Signed, sealed and delivered in the presence of:
JEWEL PATTEN,
EDWARD R. ALLORD.

78

Exhibit C

[Copy]

MIAMI, FLORIDA *February 5th, 1932.*

No. 3, $500.00.

On or before June 15th, 1932 after date, for value received, we promise to pay to the order of The Widening Company Five Hundred And No/100 Dollars Payable at First National Bank, of Miami, Florida, with interest thereon at the rate of 8 per cent, per annum from date until fully paid. Interests payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent per annum, payable semi-annually.

EMPIRE REALTY SECURITIES CORPORATION, [SEAL]
By F. H. RAND, Jr., *President.* [SEAL]
[CORPORATE SEAL]

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

Due ————, 193—.

Endorsed on the back of note: The Widening Company, By F. H. Rand, Jr., President. Miller O. Phillips.

1 Documentary stamp for 50¢—Cancelled.

79 *Exhibit D*

[Copy]

Know All Men By These Presents; That Empire Realty Securities Corporation, a corporation, etc. as Principal and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc. as Surety, are held and firmly bound unto The Widening Company, a corporation, etc. hereinafter called the Obligee, its successors and/or assigns, in the penal sum of Five Hundred ($500.00) Dollars, for the payment of which sum well and truly to be made, the Principal and Surety do hereby bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 5th day of February 1932.

The condition of this obligation is such that; Whereas, Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of Five Hundred ($500.00) Dollars, payable on or before June 15th, 1932, after date, to the order of The Widening Company, which promissory note is in words and figures as follows, to wit:

MIAMI, FLORIDA, *February 5th, 1932.*

No. 3, $500.00.

On or before June 15th, 1932, after date, for value received, we promise to pay to the order of The Widening Company, Five Hundred and No/100 Dollars, payable at First National Bank of Miami, Florida, with interest thereon at the rate of 8% per annum from date until fully paid. Interests payable semi-annually. The maker and endorser of this note further agrees to waive demand, notice of non-payment and protest and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent per annum payable semi-annually.

EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, JR., *President.*

Payment guaranteed by Bond of New Jersey Fidelity & Plate Glass Insurance Company.

And, whereas, the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as to principal and interest, upon demand of the Obligee, or the assignee of the Obligee, in the event the said note be not fully paid by the Empire Realty Securities Corporation at its maturity.

Now, if the above described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void; else same shall remain in full force and effect.

A condition of this bond is that no assignment or endorsement of the above described note shall in any way relieve the Surety from its obligation to pay said note in accordance with the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass to the assignee, payee, endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

80 Witness the hand and seal of the Principal and Surety this day and year first above written.

EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, JR., *President*,
As Principal.

[Seal—Empire Realty Securities Corporation.]

NEW JERSEY FIDELITY & PLATE GLASS
INSURANCE COMPANY,
By E. L. SEMPEL, *Attorney in Fact.*
As Surety.

[Seal—New Jersey Fidelity & Plate Glass Insurance Company.]

Signed, sealed, and delivered in the presence of:
JEWEL PATTEN,
EDWARD R. ALLORD.

81 In Circuit Court of Leon County

[Title omitted.]

Claim of The London Operating Company

Filed October 30, 1933

STATE OF FLORIDA,
County of Dade, ss:

At Miami, Dade County, Florida, on the 24th day of October, A. D. 1933, came B. H. London, Paul D. McGarry, and John C. Sullivan, and make oath and say:

That B. H. London is the duly qualified and acting President of The London Operating Company, a corporation duly organized and existing under and by virtue of the laws of the State of Florida, and that he is duly authorized to make this proof of claim for and on behalf of said The London Operating Company, one of the claimants herein. That Paul D. McGarry and John C. Sullivan are claimants by reason of a collateral assignment of the judgment herein and the bond securing same hereinafter referred to.

That on the 1st day of December, A. D. 1931, The London Operating Company filed a landlord and tenant action in the County
82 Judge's Court in and for Dade County, Florida, wherein Harry Masser, sometimes known as Harry Messer, and Morris Baron were defendants, Case No. 987. That immediately after filing said

action in the County Judge's Court, Case No. 987, Harry Masser and Morris Baron filed a bill in the Circuit Court in and for Dade County, Florida, against the London Operating Company, Case No. 33876–C, wherein they sought to enjoin The London Operating Company from proceeding with the said landlord and tenant action. Said equity suit, No. 33876–C, upon motion of defendant and after hearing, was dismissed by Hon. Worth W. Trammell, one of the Circuit Judges in and for Dade County, Florida. Thereafter, the complainants in the equity suit, to wit, Harry Masser and Morris Baron, applied to the Supreme Court of Florida for a constitutional writ enjoining Hon. W. F. Blanton, County Judge of Dade County, Florida, from proceeding further with said landlord and tenant action, Case No. 987, until the appeal which had been entered in the equity suit could be heard by the Supreme Court. This constitutional writ was issued on the 23rd day of December, A. D. 1931. Upon motion of The London Operating Company the said constitutional writ was, on the 6th day of January, 1932, modified by the Supreme Court requiring the said complainants in the equity suit, namely, Harry Masser and Morris Baron, who were also the defendants in the said landlord and tenant action, to file in the Circuit Court of Dade County, Florida, in said equity action, No. 33876–C, a good and sufficient bond in the sum of $15,000.00 conditioned to pay whatever judgment for rent of the property involved in said litigation should be obtained against the said Harry Masser and Morris Baron in a court of competent jurisdiction. The said landlord and tenant action was instituted by The London Operating Company against Harry Masser and Morris Baron because of their failure to pay the sum of $15,000.00 rent due on
83 November 1, 1931, under a lease covering The London Arms Hotel and hereinafter referred to. Pursuant to the order of the Supreme Court modifying the constitutional writ, Harry Masser and Morris Baron gave a bond conditioned as aforesaid with the New Jersey Fidelity & Plate Glass Insurance Company as surety. The Supreme Court on November 2, 1932, by its opinion reported in 145 So. 79, affirmed the lower Court in the dismissal of the bill in equity suit No. 33876–C. Thereafter, to wit, on the 19th day of March, 1932, The London Operating Company filed a common law action against Harry Masser and Morris Baron in the Circuit Court, Eleventh Judicial Circuit, Dade County, Florida, At Law No. 14477, for said $15,000.00 installment of rent due November 1, 1931, as will more fully appear by reference to a certified copy of the declaration, together with the exhibits attached including the lease hereinabove referred to, which are hereto attached, marked "Exhibit A", and made and deemed a part hereof. That thereafter, to wit, on the 16th day of December, A. D. 1932, the said common law action, Case No. 14477, came on for trial and a verdict and judgment were duly rendered for said rent claim against Harry Masser and Morris Baron in the principal sum of $15,000.00, together with costs of said suit

taxed in the sum of $16.80, which said judgment was duly entered in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. A certified copy of said judgment is hereto attached, marked "Ehibit B", and made and deemed a part of this proof of claim. Attached hereto and marked "Exhibit C", is a certificate of the Clerk of the Circuit Court in and for Dade County, Florida, to the effect that no writ of error has ever been sued out to the Supreme Court on said final judgment in said cause.

That the said bond executed by said New Jersey Fidelity
84 & Plate Glass Insurance Company, as surety, is held by the Clerk of the Circuit Court in and for Dade County, Florida, a photostatic copy thereof being hereto subjoined, marked "Exhibit D", and made and deemed a part of this proof of claim.

That this claim against the New Jersey Fidelity & Plate Glass Insurance Company on behalf of The London Operating Company, Paul D. McGarry and John C. Sullivan, is in all respects just and true to the best of deponents' knowledge and belief; that deponents know of their own knowledge that no payment of or on account of the aforesaid claim has been made; that there are no set-offs or counterclaims thereto; that claimants have no security except as above stated. Deponent B. H. London further states that there has been no assignment of said claim or any part thereof except that on the 12th day of July, A. D. 1933, said The London Operating Company duly and regularly assigned said judgment and all the beneficial rights and interest in, to and against said surety bond securing same, to Paul D. McGarry and John C. Sullivan, of Miami, Florida, for the purpose of securing to said Paul D. McGarry and John C. Sullivan the sum of not exceeding Five Thousand Dollars ($5,000.00), as set forth in said collateral assignment, a true copy of said collateral assignment and power of attorney therein contained being hereto subjoined, marked "Exhibit E", and made and deemed a part hereof. That deponents Paul D. McGarry and John C. Sullivan state that they have not assigned, sold, or transferred their interest or any part thereof in said judgment or in the bond
85 securing same.

Further deponents saith not.

B. H. LONDON,
As President of The London Operating Company.
PAUL W. McGARRY.
J. C. SULLIVAN.

Sworn to and subscribed before me this 24th day of October, A. D. 1933.

[SEAL]

HELEN BRADEN,
Notary Public, State of Florida at Large.

My commission expires 6/4/34.

86 *Exhibit A*

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida

At Law No. 14477

THE LONDON OPERATING COMPANY, A CORPORATION ORGANIZED AND Doing Business Under the Laws of the State of Florida, plaintiff

vs.

HARRY MASSER, SOMETIMES KNOWN AS HARRY MESSER, AND MORRIS Baron, defendants

Damages $30,000.00.

THIRD AMENDED DECLARATION

Comes now The London Operating Company, a Florida corporation, plaintiff, by its undersigned attorneys, and sues the defendants Harry Masser, sometimes known at Harry Messer, and Morris Baron, in this its third amended declaration and for cause of action says:

Count One

That thereafter, towit, on the 15th day of April, A. D. 1930, the plaintiff by a certain instrument in writing leased and let to the defendants the following described real and personal property, to wit:

That certain hotel known as "The London Arms", situated upon lot 12 of block 12 of Ocean Beach No. 1, according to the plat thereof recorded in Plat Book 3, at page 11 of the Public Records of Dade County, Florida, together with all furniture, furnishings, and equipment now located in said hotel, a complete description of which is attached to the Lease and made a part of the Lease.

for a term of three years beginning on the first day of November 1930, and ending on the 31st day of October, 1933, at the rental of Forty Five Thousand Dollars ($45,000.00), which was due and payable as set forth in said lease, of which rental there is now due to plaintiff the sum of Seven Thousand Five Hundred Dollars
87 ($7,500.00) which was due and payable on the 15th day of February 1931, and the further sum of Fifteen Thousand Dollars ($15,000.00) due on the first day of November 1931, making a total sum due and unpaid of Twenty Two Thousand Five Hundred Dollars ($22,500.00). That said sum of $22,500.00 is overdue and remains unpaid, and although plaintiff has demanded payment of same the defendants have failed and refused to pay to the plaintiff the said sums or any part thereof.

A copy of said Lease is attached to the amended declaration marked "Exhibit A", and made a part thereof by reference the same as if said lease was copied in full herein.

Plaintiff further avers that the defendants in and by the terms of said Lease obligated themselves to pay attorney's fees in case of default, as follows:

"In case of the failure of the lessees or their assigns to pay the rent herein reserved when the same shall become due and the same is placed with an attorney for collection, the lessees agree to pay to the lessor an attorney's fee of ten percent (10%) of the amount due the lessor together with all legal costs and charges incidental therto",

and that by reason of the defendants' default in the payment of rent in the lease provided to be paid, it has become necessary for plaintiff to employ an attorney to collect said rent that is now due and unpaid, and that it has placed the collection of same in the hands of the undersigned attorneys and has become liable and has obligated itself to pay to its undersigned attorneys ten percent. (10%) of the amount due as attorney's fees, and plaintiff further avers that said sum is reasonable.

Hence, plaintiff sues and claims damages in the sum of Thirty Thousand Dollars ($30,000.00).

A bill of particulars is hereto attached marked "Exhibit B."

Count Two

The plaintiff let in writing to the defendants the following described property:

88 That certain hotel known as "The London Arms", situated upon lot 12 of block 12 of Ocean Beach No. 1 according to the plat thereof recorded in Plat Book 3, at page 11 of the Public Records of Dade County, Florida, together with all furniture, furnishings, and equipment now located in said hotel, a complete description of which is attached to the lease and made a part of the lease,

for a period of three (3) years, to hold from the 1st day of November, 1930, for the sum of Forty-five Thousand Dollars ($45,000.00) payable in installments as follows:

$5,000.00 cash on the 15th day of April, 1930; $10,000.00 on November 1, 1930; $7,500.00 on the 15th day of February, 1931; and $15,000.00 on the 1st day of November, 1931; of which rent the installments due on February 15, 1931, in the sum of $7,500.00 and the installment due on November 1, 1931, in the sum of $15,000.00 are now due and unpaid, and although plaintiff has demanded payment of said installments the defendants have failed and refused to pay same.

A copy of said Lease is attached to the amended declaration marked "Exhibit A", and made a part hereof by reference.

Plaintiff further avers that the defendants in and by the terms of said Lease obligated themselves to pay attorney's fees in case of default, as follows:

"In case of the failure of the lessees or their assigns to pay the rent herein reserved when the same shall become due and the same is placed with an attorney for collection the lessees agree to pay to the lessor an attorney's fee of ten percent (10%) of the amount due the lessor together with all legal costs and charges incidental thereto", and that by reason of the defendants' default in the payment of rent in the lease provided to be paid, it has become necessary for plaintiff to employ an attorney to collect said rent that is now due and unpaid, and that it has placed the collection of same in the hands
89 of the undersigned attorneys and has become liable and has obligated itself to pay to its undersigned attorneys ten percent (10%) of the amount as attorney's fees, and plaintiff further avers that said sum is reasonable.

Hence, plaintiff sues and claims damages in the sum of Thirty Thousand Dollars ($30,000.00).

A bill of particulars is hereto attached marked "Exhibit B."

Count Three

And the plaintiff sues the defendants for money payable by the defendants to the plaintiff for the defendants' use by the plaintiff's permission, of messuages and lands of the plaintiff:

Hence, the plaintiff sues and claims damages in the sum of Thirty Thousand Dollars ($30,000.00).

A bill of particulars is hereto attached marked "Exhibit B."

Paul D. McGarry,
PAUL D. McGARRY,
J. C. Sullivan,
J. C. SULLIVAN,
Attorneys for plaintiff.

Received a copy of the Third amended declaration this 22nd day of October, 1932.

A. ARONOVITZ,
Attorney for defendants.

90 *Exhibit B*

MIAMI, FLORIDA, *June 6, 1932.*

Harry Masser, sometimes known as Harry Messer, and Morris Baron, in account with The London Operating Company, Miami Beach, Florida.

1931:

Feb. 15.	For rent due this date on The London Arms Hotel	$7,500.00
Nov. 1.	For rent due this date on The London Arms Hotel	15,000.00
		22,500.00

Together with interest at the rate of 8% per annum on the $7,500 installment from February 15, 1931; and on the $15,000.00 installment from November 1, 1931, with interest at the rate of 8% per annum.

Together with 10% attorney's fees of the amount due.

91 *Exhibit A*

LEASE

This indenture, Made this 15th day of April, A. D. 1930, by and between The London Operating Company, a Florida corporation, hereinafter called the Lessor which term shall include its successors, legal representatives and assigns wherever the cotext so requires or admits, and Harry Messer and Morris Baron of Miami Beach, Dade County, Florida, hereinafter called the Lessees which term shall include their heirs and assigns wherever the context so requires or admits.

Witnesseth:

That the Lessor, subject to the conditions and limitation hereinafter mentioned, in consideration of the rent and the Lessees' covenants hereinafter reserved and contained, does hereby demise and lease unto the Lessees the following described premises, to wit:

That certain Hotel known as "The London Arms" situated upon Lot 12 of Block 12 of Ocean Beach #1, according to the plat thereof recorded in Plat Book 3 at page 11 of the Public Records of Dade County, Florida, together with all furniture, furnishings and equipment now located in said Hotel, a complete description of which is attached hereto as Exhibit A and made a part of this lease.

To have and to hold the said premises unto the said Lessees for a period of three (3) years beginning on the 1st day of November, A. D. 1930, and ending on the 31st day of October, A. D. 1933.

And the Lessees hereby agree and bind themselves, well and truly, to pay as rental for the said premises the following amount, to wit: the sum of Forty-five Thousand ($45,000.00) Dollars, payable as follows: Five Thousand ($5,000.00) Dollars on the signing of this lease, receipt whereof is hereby acknowledged; Ten Thousand ($10,000.00) Dollars on the first day of November, A. D. 1930; Seven Thousand Five Hundred ($7,500.00) Dollars on the fifteenth day of February, A. D. 1931; Fifteen Thousand ($15,000.00) Dollars on the first day of November, A. D. 1931; and Seven Thousand Five
92 Hundred ($7,500.00) Dollars on the first day of November, A. D. 1932. Said payments shall be made at the Miami Beach Bank & Trust Company, Miami Beach, Florida, or at such other place as the Lessor shall indicate in writing.

If for any reason default is made in the payment of rent herein required, the Lessor may at its option declare the lease at an end and may immediately reenter and retake the premises and repossess the same as in their former estate and in such an event the Lessees hereby release unto the Lessor and waive unto said Lessor any damage or

claims of damage that may accrue to them in the said retaking of said premises by the said Lessor and the fact that the Lessor may have taken possession of the premises and may have leased the same to other parties shall not be any defense to any action for rent due for the unexpired term. However, in the event the Lessor re-leases said premises the said Lessees shall be given credit for the amount which the said Lessor receives for said re-leasing of said premises during the unexpired term herein provided for.

If there is a failure for a period of fifteen (15) days to make any of the payments covenanted to be paid under this lease, the Lessor may apply to the proper courts for a receiver to take charge of said premises and collect the rents and profits therefrom and hold same pending the outcome of said litigation. And the Lessees hereby covenant and agree that they will not contest the appointment of said receiver and hereby consent in advance to the appointment of a receiver in such an event.

And the Lessees for and in consideration of the use and occupancy of said premises, as aforesaid, and to the intent that the obligations may continue throughout the term hereby created, hereby covenant and agree with the Lessor as follows:

1. To pay the rent at the time and in the amount and manner herein provided.

93 2. To bear, pay, and discharge all gas, electric light, telephone, telegraph, water bills, and other charges which may become payable during the continuation of this lease.

3. That they will not use the premises or permit the premises to be used for any illegal or immoral purposes.

4. That they will remove at their own expense all garbage, trash, and the like accumulated on the premises by reason of the use and occupancy of same premises and to keep the premises in a clean and sanitary condition.

5. That they will keep the interior of the premises together with the windows, doors, fixtures, walls and appurtenances in good substantial state of repair and condition.

6. That the said premises will be used only as a hotel and for hotel purposes.

7. That Lessees will not assign the premises or this lease or any part thereof without the written consent of the Lessor. The Lessees, however, shall have the right to sublet said premises, or any portion thereof, to responsible parties but such subletting shall not in any manner affect the terms and conditions of this lease and shall not be construed in any manner as releasing the Lessees herein from any and all liability to care for and protect said property or to do and perform all of the terms, conditions, and convenants of this lease or to pay the rents provided for herein.

8. To permit the Lessor or its agents to enter upon the premises or any part thereof at all reasonable hours for the purpose of examining the same or making such repairs or alterations as may be necessary for the safety or preservation thereof and no claim or action for

damages or set-off of rent by reason or on account of such entry, repairs or alterations shall be made, had, or allowed.

9. No alterations, additions, or improvements shall be made in or to the premises by the Lessees without the written consent of the Lessor and the additions and improvements made by the Lessees shall belong to the Lessor. It is agreed at this time, however, that the Lessees may make a door or doors from a window on the south side of the building and leading into the lobby of the hotel. The cost of the material and labor in the construction of said door or doors shall be paid by the Lessees.

10. That the Lessees have examined and know the condition of the premises and will receive and accept same in its present condition on November 1, 1930, with the exception of the painting and completion of the solarium as herein provided for.

11. To protect the Lessor and save it harmless from any and all liability for any damage or claim of damage arising from any cause or nature whatsoever to any occupant of the said premises or to any other person.

94 12. If the premises shall be damaged by fire or other cause so as to be capable of being repaired within a reasonable time, the Lessor shall have the option to repair the same and during the time that the repairs are being made the Lessor shall remit to the Lessees a just and fair portion of the rent according to the nature of the damage sustained and according to the extent that the Lessees are deprived of the use of the said premises: provided, however, that should said premises be damaged by fire or other cause during the summer months and same be repaired by Lessor before December 1st of said year then said Lessees shall not be entitled to any damages or remittances of rent because of the deprivation or loss of the use of the premises occasioned to the Lessees by reason thereof.

13. It is understood and agreed that no waiver of any condition or agreement in this instrument contained or acquiece in any breach thereof shall be taken to constitute a waiver of any subsequent breach and that no damage to or destruction of any of the buildings on the premises by fire or otherwise shall be taken to entitle the Lessees to surrender the demised premises nor have the effect of terminating this lease.

14. That during the term of this lease the Lessees will pay Three Hundred ($300.00) Dollars per year or the sum of Nine Hundred ($900.00) dollars to Claude-Neon Southern Corporation or its assigns for the London Arms Hotel Neon Sign attached to the front of the building.

15. That the premises shall not be used in such a manner as to be or create a nuisance; that Lessees shall at all times maintain said premises in such a manner as will not mar the appearance of said property.

16. That said Lessees agree at the end of the term to deliver to the Lessor said premises together with all furniture, furnishings and equipment located in said Hotel and described in the attached

inventory thereof marked "Exhibit A", and attached hereto, said furniture, furnishings, and equipment to be in as good state of repair as they are now, damage by wear and the elements alone excepted.

17. In case of the failure of the Lessees or their assigns to pay the rent herein reserved when the same shall become due and the same is placed with an attorney for collection the Lessees agree to pay the Lessor an attorney's fee of ten percent (10%) of the amount due the Lessor together with all legal costs and charges incidental thereto.

Upon the performance by the Lessees of the agreements and conditions herein set forth and upon the payments herein required to be made, the Lessor hereby covenants as follows:

1. That it will paint the woodwork, walls and ceilings of the sleeping rooms and halls of the premises and will complete the solarium on half of the roof in the following manner on or before November 1, 1930, to wit: to build a slat wooden floor with a six foot partition in the middle and a four foot screen on the outside of
95 pipe and canvass to be aprpoved by the Building Inspector.

2. To deliver possession of said premises to Lessees on November 1, 1930.

3. That said Lessees shall and may peaceably and quietly have, hold, and enjoy the demised premises during the term aforesaid.

4. That the Lessor shall keep in good state of repair the roof and outside walls of the buildings.

5. That the Lessor shall completely furnish fifty-three (53) rooms according to an inventory attached hereto as Exhibit A and made a part hereof.

6. Provided the Seventy-five Hundred ($7500.00) Dollar payment is made on February 15, 1931, said Lessor will pay the Lessees six percent (6%) interest on said $7500.00 from the said date until November 1, 1932.

7. That said Lessor shall insure the said premises against fire and hurricane.

This lease is executed in triplicate.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first hereinabove written.

[CORPORATE SEAL] THE LONDON OPERATING COMPANY,
[SEAL] By L. LONDON, *President*,
Lessor.

Attest:

B. H. LONDON, *Secretary.*

Signed, sealed, and delivered in the presence of:
LILLIAN C. KLINE,
ED. M. REIMAN,
BENJ. F. LEVINSON,
L. RITTGERS.

[SEAL] HARRY MESSER,
[SEAL] MORRIS BARON,
Lessees.

STATE OF FLORIDA,
County of Dade:

Before me, the undersigned authority, personally appeared B. H. London and L. London, President and Secretary respectively of The London Operating Company, a Florida corporation, and Morris Baron and who acknowledged before me that they executed the foregoing instrument freely and voluntarily for the purposes therein set out.

In witness where, I have hereunto set my hand and official seal at Miami, Dade County, Florida, this 15th day of April, A. D. 1930.

[NOTARY PUBLIC SEAL] BENJAMIN COHEN,
Notary Public, State of Florida at Large.

My commission expires November 26, 1932.

96 STATE OF OHIO,
County of Franklin:

I hereby certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Harry Messer, to me well known to be the person described in and who executed the foregoing lease, and he acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

Witness my hand and official seal at Columbus, County of Franklin, and State of Ohio, this 30 day of April, A. D. 1930.

[NOTARY PUBLIC SEAL] Louise Rittgers,
Notary Public, State of Ohio.,
LOUISE RITTGERS,
Notary Public.

My commission expires February 1931.

97 INVENTORY OF LONDON ARMS HOTEL, APRIL 15, 1930

Bedrooms:
- 53 Lamps
- 103 Beds
- 103 Matresses
- 103 Springs
- 53 Rugs
- 53 Dressers
- 53 Chairs
- 53 Night Stands
- 53 Desks
- 53 Rooms, Drapes, and Curtains
- 106 Pillows
- 150 Window Shades

Linen Supplies:
- 408 Sheets
- 196 Pillow Cases
- 68 Green Blankets
- 7 Gray and Blue Blankets
- 35 Pink Spreads
- 67 Green Spreads
- 4 White spreads

Linen Supplies—Continued.
- 95 Pads
- 106 Scarfs
- 50 Bath Mats
- 413 Hand Towels
- 444 Bath Towels
- 29 Pink Blankets

Kitchen and Dining Room Linen (tops):
- 98 Square Table Cloths
- 76 Table Cloths
- 414 Napkins
- 25 Dish Towels
- 67 Side Towels
- 26 Table Pads
- 3 pcs. Table Padding

Kitchen Equipment:
- 180 Forks
- 180 Knives
- 180 Tea Spoons
- 120 Soup Spoons

Kitchen Equipment—Continued.
226 Dinner Plates
276 Salad Plates
220 Bread and Butter Plates
177 Soup Plates
280 Fruit Dishes
130 Cereal Dishes
119 Vegetable Dishes
120 Casserole Dishes
27 Relish Dishes
112 Custard Cups
70 Small Platters
68 Large Platters
2 Extra Large Platters
73 Cups
125 Saucers
12 Syrup Pitchers
18 Demitasse Cups
66 Consomme Cups
127 Amber Water Glasses
106 Amber Cocktail Glasses
93 Amber Parfait Glasses
98 18 Amber Ice Tea Glasses
77 Orange Glasses
80 Water Glasses
31 Salt & Pepper
131 Creamers
4 Mustard Jars
1 Crescent Dish Washer Model K
1 Blodgett Bake Oven
1 Eight Slice Elec. Toaster
1 22 Qt. Mixer Electric with attachments Meat Chopper, Egg Beater, Juice Extracter.
4 Gas Ranges
1 Steam Table
1 Battery Coffee Urns (3)
3 Ice Boxes
1 Scale
1 Grid'le Iron
17 Stock pots
54 Toast Covers
78 Coffee and Tea Pots
23 Vinegar and Oil Bottles
9 Gravey Pitchers
12 Trays
24 Amber water Bottles

Kitchen Equipment (Con):
34 Silver Sugar Bowls
10 Ash Trays
4 Enamel Pitchers
15 Cake Pans
42 Gallon Crocks
16 Pie Tins
11 Frying Pans
2 Biscuit Cutters
1 Egg Slicer
3 Bake Pans
1 Can Opener
29 Bake Pans
4 Egg Whips
1 Desk and Chair
1 Meat Saw
1 Cleaver
1 Gal and Qt. Measure.
2 Mixing Bowls
2 Dish Pans
8 Vegetable Spoons
1 Colender
1 Scive
3 Funnels
1 Carving knife

Dining Room:
30 Tables
120 Chairs
12 Lamps
8 Stands
2 Sideboards
2 Runners of Carpet

Lobby:
4 Davenport and Chairs
12 Extra Chairs
2 Cogswell sets
6 End Tables
6 Lamps
1 Large Center Table
1 Octagon Shape Table
2 Table Lamps
1 Gas Heater in Fire Place
2 Large Rugs
1 Center Runner
2 Writing Desks

(Inventory as of Apr. 15, 1930.)

H. MASSER.
M. BARON

O. K. By B. H. London.

99 In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida

At law no. 14477

THE LONDON OPERATING COMPANY, A CORPORATION, ETC., PLAINTIFF

vs.

HARRY MASSER, SOMETIMES KNOWN AS HARRY MESSER, AND MORRIS BARON, defendants

Damages $30,000.00.

ORDER

This cause coming on to be heard upon motion for a better bill of particulars, upon a demurrer, upon a motion to strike and upon motion for compulsory amendment, and after argument of counsel and the Court being duly otherwise advised,

It is thereupon considered, ordered, and decreed that the said motion for better bill of particulars be and the same is hereby denied; that the said demurrer be and the same is hereby overruled; that the said motion for compulsory amendment be and the same is hereby denied, and that the said motion to strike count 2 of the third amended declaration be and the same is hereby granted.

It is further decreed that the defendants have until the 15th day of December, A. D. 1932, to file their pleas.

Done and ordered in Chambers at Miami, Florida, this 29 day of November, A. D. 1932.

WORTH W. TRAMMELL,
Circuit Judge.

100 STATE OF FLORIDA,
County of Dade, ss:

I, E. B. Leatherman, Clerk of the Circuit Court of the 11th Judicial Circuit of Florida, in and for Dade County, do hereby certify that the above and foregoing pages numbered from 1 to 13, inclusive, contain a true and correct copy of certain papers, filed in the case of The London Operating Company, Plaintiff, versus Harry Masser et al., Defendants, being suit No. 14477, said record consisting of the following:

1. Third Amended Declaration, filed October 22, 1932.

2. Copy of the Lease from The London Operating Company to Harry Masser et al., attached to the Amended Declaration as Exhibit "A", filed July 28, 1932.

3. Order filed November 30, 1932 and recorded in Circuit Court Minute Book 70, at page 60.

All as appear on file and of record in my office.

In witness whereof, I have hereunto set my hand and affixed my official seal, this the 18th day of October, A. D. 1933.

[SEAL] E. B. LEATHERMAN,
Clerk, Circuit Court.
By B. S. PEELER,
Deputy Clerk.

101 *Exhibit B*

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, State of Florida

At Law, No. 14477

THE LONDON OPERATING COMPANY, A CORPORATION ORGANIZED AND doing business under the laws of the State of Florida, plaintiff
vs.
HARRY MASSER, SOMETIMES KNOWN AS HARRY MESSER, AND MORRIS Baron, defendants

FINAL JUDGMENT

This cause came on for trial on the 14th day of December, A. D. 1932, and a jury having been duly impaneiled to decide the issues presented herein, and after hearing the testimony and retired to consider their verdict, returned the following. Verdict of Jury:

DECEMBER 14, 1932.

We, the Jury, find for the plaintiff in the above entitled cause and against the defendants Harry Masser, sometimes known as Harry Messer, and Morris Baron, and assess the plaintiff's damages at $15,000.00. So say we all.

HARRY GRAHAM, *Foreman.*

and upon consideration thereof, the Court being fully and sufficiently advised in the premises;

It is, thereupon, ordered and adjudged that the plaintiff, The London Operating Company, a corporation organized and doing business under the laws of the State of Florida, do have and recover of and from the defendants Harry Masser, sometimes known as Harry Messer, and Morris Baron, the sum of Fifteen Thousand Dollars ($15,000.00), together with the costs of this suit taxed by the Clerk in the sum of $16.80.

It is further ordered that execution shall issue therefor.

Done and ordered at Miami, Florida, this the 16th day of December, A. D. 1932.

H. F. ATKINSON, *Judge.*

A true copy of the Original on File in the Clerks Office. Witness my hand and Official Seal this 4 day of October A. D. 1933.

E. B. LEATHERMAN,
Clerk Circuit Court.
By L. G. MOORE, *D. C.*

102 *Exhibit C*

In the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida

Common Law No. 14477

THE LONDON OPERATING COMPANY, PLAINTIFF
vs.
HARRY MASSER, ET AL., DEFENDANTS

I, E. B. Leatherman, Clerk of the Circuit Court in and for Dade County, Florida, do hereby certify that I have examined the file and docket in the above entitled cause and find that no Writ of Error has ever been sued out to the Supreme Court of the State of Florida on the Final Judgment entered on December 16th, 1932.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said Circuit Court this the 17th day of October, A. D. 1933.

[SEAL]

E. B. LEATHERMAN,
Clerk Circuit Court.
By L. G. MOORE,
Deputy Clerk

103 *Exhibit D*

In the Circuit Court of the Eleventh Judicial Circuit of the State of Florida, in and for Dade County, in Chancery

33876-C

HARRY MASSER AND MORRIS BARON, COMPLAINANTS & APPELLANTS

vs.

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, defendant & appellee

BOND

Know all men by these presents, That the undersigned, Morris Baron & Harry Masser, as principal, and New Jersey Fidelity & Plate Glass Insurance Co., a corporation organized and existing under the laws of the State of New Jersey, as surety, are held and firmly bound unto The London Operating Company, a corporation organized and existing under the laws of the State of Florida, in the sum of fifteen thousand ($15,000.00) dollars, for the payment whereof well and truly to be made, the undersigned bind themselves,

their respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 8th day of January, A. D. 1932.

The condition of the above obligation is such that if the above-named Complainants and Appellants Harry Masser and Morris Baron, shall pay whatever judgment for rent of the property involved in the above-entitled cause is obtained against them, in a court of competent jurisdiction, then this obligation and bond to be null and void, else to remain in full force and virtue.

[SEAL] MORRIS BARON,
Principal.
HARRY MASSER,
As principal.

104 NEW JERSEY FIDELITY & PLATE GLASS INSURANCE CO.

[SEAL] By E. L. SEMPLE, *Its attorney in fact,*
As surety.

Taken and approved by the undersigned this 8th day of January, A. D. 1932.

WORTH W. TRAMMELL.
Judge of the Circuit Court of the Eleventh Judicial Circuit of the State of Florida, in and for Dade County.

Filed this 12 day of Jan., A. D. 1932, and recorded this 13 day of Jan., A. D. 1932, in Bond Book 4 on Page 408.

E. B. LEATHERMAN,
Clerk Circuit Court.

[SEAL] By W. C. McGLOTHLIN,
Deputy.

STATE OF FLORIDA,
County of Dade, ss:

I hereby certify that the above and foregoing is a true and correct copy of a Bond filed in my office the 12 day of Jan., A. D. 1932, and recorded in Bond book 4, at page 408.

Witness my hand and official seal this 4th day of Oct., A. D. 1933.

[SEAL] E. B. LEATHERMAN,
Clerk Circuit Court.
By F. L. DAVIS,
Deputy Clerk.

105 *Exhibit E*

COLLATERAL ASSIGNMENT OF JUDGMENT

Know all men by these presents That whereas The London Operating Co., a Florida Corporation, of Miami Beach, Dade County, Florida, did on the 16th day of December, A. D. 1932, recover by judgment in the Circuit Court, Eleventh Judicial Circuit, Dade

County, Florida. At Law No. 14477, against Harry Masser, sometimes known as Harry Messer, and Morris Baron, in the sum of Fifteen Thousand Dollars ($15,000.00), together with suit costs as by the records thereof will more fully appear; and

Whereas there was issued in conjunction with said claim thus reduced to judgment and as a guarantee for the payment thereof a surety bond issued by the New Jersey Fidelity and Plate Glass Insurance Company, a surety company organized under the laws of New Jersey and qualified to transact business within the State of Florida, and neither the amount represented by said judgment nor any part thereof has been paid, either by the parties defendant in said cause or by said New Jersey Fidelity and Plate Glass Insurance Company as surety thereon; and

Whereas said The London Operating Co. is indebted on accounts stated to Paul D. McGarry and John C. Sullivan, hereinafter referred to as "Attorneys", of Miami, Florida, in the sum of Two Thousand Five Hundred Forty-two Dollars and Eleven Cents ($2,542.11) and in addition to said amount is likewise obligated to said Attorneys to cause to be assigned a twenty percent (20%) interest in and to said judgment, said surety bond securing payment thereof and the proceeds to be derived therefrom.

Now, therefore, this indenture witnesseth, That in consideration of the premises as well as the sum of One Dollar ($1.00) in hand paid by said Attorneys to said The London Operating Company, the receipt whereof is hereby acknowledged, said The London Operating Co. hereby assigns unto Paul D. McGarry and John C. Sullivan the said judgment and all the beneficial rights and interest in said surety bond securing the payment thereof and any and all sums of money or other benefits or advantages that may be had or obtained by reason thereof and the benefit of all securities for the same, for the purpose of securing to said Attorneys the sum of not exceeding Five Thousand Dollars ($5,000.00) made up of said twenty percent (20%) interest in said judgment and the bonds securing same and said above mentioned account stated between the parties hereto.

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To hold the same unto said Attorneys absolutely but upon trust, nevertheless, to call in, collect and compel payment thereof and out of the moneys to be so realized in the first place to pay the costs, charges, and expenses incurred in realization, and in the next place to retain and pay to themselves such amount as may at that time remain due and unpaid of the sum of $2,542.11, represented by accounts stated between said parties, together with twenty percent (20%) of any and all sums realized from the collection of said judgment and said surety bond securing the payment thereof, and to pay the surplus to said The London Operating Co.

And said The London Operating Co. does hereby make, constitute, and appoint the said Paul D. McGarry and John C. Sullivan, their executors, administrators, and assigns, to be the true and lawful At-

torney and attorneys irrevocably, for said The London Operat-
107 ing Co., and in its name for the uses and purposes herein provided, to ask, demand, and by all lawful means recover and receive all money due or to become due on the said judgment and said surety bond executed to guarantee the payment thereof, and to sue out execution on said judgment or to prosecute any legal proceedings on the said judgment or against the said surety company which said The London Operating Co. might do for the recovery thereof, and on payment or collection of the same to acknowledge satisfaction or to give good and sufficient releases and discharges of the said judgment and or the said surety bond issued in connection therewith.

And said The London Operating Co. does hereby covenant to and with said attorneys, their executors, administrators, and assigns, that there is now due and owing on said judgment the sum of Fifteen Thousand Dollars ($15,000.00) and suit costs, with interest thereon from the 16th day of December, A. D. 1932, and that said The London Operating Co. covenants that there are no prior assignments or claims against said judgment or surety bond and that it has full right and lawful authority to execute this assignment.

In witness whereof the said The London Operating Co. has caused these presents to be executed by its President, attested by its Secretary, and its corporate seal to be affixed this 12th day of July, A. D. 1933.

[CORPORATE SEAL] THE LONDON OPERATING CO.,
By (Signed) B. H. LONDON, *President.*

Attest:

(Signed) HARRY SIMONHOFF, *Secretary.*

108 STATE OF FLORIDA,
County of Dade, ss:

I, an officer duly authorized to administer oaths and take acknowledgments according to the laws of the State of Florida, duly qualified and acting, hereby certify that B. H. London and Harry Simonhoff, respectively, as President and Secretary of The London Operating Co., a Florida corporation, to me personally known, this day acknowledged before me that they executed the foregoing Collateral Assignment of Judgment as such officers of said corporation, and that they affixed thereto the official seal of said corporation; and I further certify that I know the said persons making said acknowledgments to be the individuals described in and who executed the said Collateral Assignment of Judgment.

In witness whereof, I hereunto set my hand and official seal at Miami, said County and State, this 12th day of July, A. D. 1933.

[NOTARY PUBLIC SEAL] (Signed) HELEN BRADEN,
Notary Public, State of Florida at Large.

My commission expires 6/4/34.

I hereby certify that the above and foregoing is a true and correct copy of the Collateral Assignment it purports to be; that I have prepared said copy of said Collateral Assignment from the original thereof and have compared said copy with the original and find that same is correct in all respects and is a true and correct copy thereof.

[SEAL] HELEN BRADEN,
Notary Public, State of Florida at Large.

My Commission Expires June 4, 1934.

109 In Circuit Court of Leon County

(Title omitted.)

Claim of Snedigar & Baya

Filed Nov. 21, 1933

STATE OF FLORIDA,
Dade County, ss:

Before me, the undersigned authority, this day personally appeared George J. Baya, who, being by me first duly sworn, upon oath deposes and says that he is over the age of 21 years; that he is an attorney at law practicing in the courts of the State of Florida, as well as the Federal Courts of said State; that he is a member of the law firm of Snedigar & Baya, Attorneys at Law, Miami, Florida, which is a co-partnership consisting solely and only of this affiant and one Louis F. Snedigar; that on or about the 30th day of December 1931, one Bernard Hope was insured by New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, under policy #118048, which protected said Bernard Hope against public liability and property damage; that on or about said date, said New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, employed the aforesaid law firm of Snedigar & Baya to render legal services unto said company and its assured, and to conduct the defense of that certain cause lately pending in the United States District Court for the Southern District of Florida, wherein N. R. Robinson was plaintiff, and Bernard Hope was defendant, same being cause # Civil;

110 that pursuant to said employment, the aforesaid law firm of Snedigar & Baya conducted the defense of said case and made various and sundry journeys and attendances at court and expenditures relating thereto; that at the instance and request of T. A. McNicholas, Special Assistant Deputy Commissioner of Banking & Insurance of New Jersey, the law firm Snedigar & Baya rendered other and further services in connection with said case subsequent to May 28th, 1932, as will appear more fully from an attached memorandum of account setting forth a true and correct statement of such additional services rendered by the aforesaid firm of Snedigar

& Baya; that by reason thereof the said New Jersey Fidelity & Plate Glass Insurance Company is indebted unto the aforesaid law firm of Snedigar & Baya in the sum of $25.00; that no part thereof has been paid, nor any security or satisfaction given for the same, and that there are no set-offs against the same; that said memorandum is hereto attached and made a part of this claim. Further this affiant sayeth not.

GEORGE J. BAYA.

Sworn to and subscribed before me this 16th day of November 1933.

[SEAL] CHARLOTTE BILSBROUGH,
Notary Public, State of Florida, at Large.

My commission expires 9/10/34.

111 MIAMI, FLORIDA, *June 21, 1932.*

In account with
Snedigar & Baya, Attorneys-at-Law, City National Bank Bldg.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
Newark, N. J.

In re: our file #5247. N. R. Robinson vs. Bernard Hope.

6/7/32 Drafting letter to insurance company re continuance of defense of case;
Drafting letter to assured re advising status of company;
6/20/32 Drafting letter to client re to advising discontinuance of defense of cases;

Fee, $25.00.

112 In Circuit Court of Leon County

[Title omitted.]

Proof of claim

Filed November 21, 1933

STATE OF FLORIDA,
County of Dade, ss:

Before me, the undersigned authority, this day personally appeared George J. Baya, who, being by me first duly sworn, upon oath deposes and says that he is over the age of 21 years; that he is an attorney at law practicing in the courts of the State of Florida, as well as the Federal Courts of said State; that he is a member of the law firm of Snedigar & Baya, Attorneys at Miami, Florida, which is a copartnership consisting solely and of this affiant and one Louis

F. Sneidigar; that on or about the 30th day of April 1931, one Charles P. Coleman was insured by New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, under policy 111909, which protected said Charles P. Coleman against public liability and property damage; that on or about said date, New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, employed the aforesaid law firm of Snedigar & Baya to render legal services unto said company and its assured and to conduct the defense of that certain cause lately pending in the United States District Court for the Southern District of Florida, wherein

R. W. Jamison was plaintiff and Charles P. Coleman
113 was defendant, same being cause #1683-M-Civil; that pursuant to said employment, the aforesaid law firm of Snedigar & Baya conducted the defense of said case and made various and sundry journeys and attendances at court and expenditures relating thereto, all as will more fully appear from an attached memorandum of account setting forth a true and correct statement of all services rendered by the aforesaid law firm of Snedigar & Baya up to and including the 28th day of May 1932; that by reason thereof, the said New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, is indebted unto the aforesaid law firm of Snedigar & Baya in the sum of $234.20; that no part thereof has been paid, nor any security or satisfaction given for the same, and that there are no set-offs against the same; that said memorandum is hereto attached and made a part of this claim. Further this affiant sayeth not.

GEORGE J. BAYA.

Sworn to and subscribed before me this 16th day of November 1933.

[SEAL]

CHARLOTTE BILSBROUGH,
Notary Public State of Florida at Large

My commission expires 9/10/34.

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MIAMI, FLORIDA, *June 13, 1932.*

In account with Snedigar & Baya, Attorneys at Law, City National Bank Bldg.

To NEW JERSEY FIDELITY & PLATE GLASS INSURANCE CO.,
Newark, N. J.

In re: Our file #5175

R. W. Jamison vs. Charles P. Coleman

4/30/31—Conference with Mr. Fite of Wesley H. Kelly Company re to securing copy of summons;
Drafting and preparation of praecipe for appearance;
Drafting letter to Clerk of Court at Vero Beach, Florida, and forwarding above for filing;

5/5/31—Drafting letter to insurer re to advising of above;
6/18/31—Drafting letter to insurer re to advisability of removing case to Federal Court;
6/23/31—Drafting and preparation of petition for removal;
Drafting bond for removal;
Drafting order of removal;
Drafting notice on above;
Drafting letter to assured and forwarding petition for execution;
Drafting letter to bonding company;
6/24/31—Drafting letter to insurer re to advising status of case;
Drafting letter to assured;
Drafting letter to Clerk and forwarding notice of hearing of petition for removal;
Drafting letter to attorneys for plaintiff:
7/1/31—Conference with bonding company re to securing execution of removal bond;
7/3/31—Attendance at court at Stuart, Florida, re presenting petition for removal of case to Federal Court;
7/8/31—Drafting letter to client relative to advising status of case and pleadings;
7/15/31—Examination of transcript of record as prepared and verified; Conference with Clerk of Federal Court re filing above.
8/25/31—Drafting and preparation of demurrer;
Drafting and preparation of motion to strike;
Drafting motion for better bill of particulars;
Drafting motion to strike portions of bill of particulars;
8/3/31—Drafting letter to attorneys for plaintiff re to argument of above pleadings;
11/6/31—Attendance at court and conducting argument of defensive pleadings;
11/16/31—Conference with Judge re to advising of error in order on pleadings;
Drafting letter to Judge Ritter re to above;
11/18/31—Conference with Judge re to correction in order;
Drafting and preparation of corrected order;
Drafting letter to assured;
12/3/31—Drafting letter to insured re to advising status of case;
12/17/31—Conference with Mr. Fite re to securing additional investigation and examination of amended bill of particulars;
12/18/31—Examination of amended bill of particulars;
Drafting letter to attorneys for plaintiff re above;
Drafting letter to defendant re to securing address of Stovall;
115 12/17/31—Conference with Mr. Fite re to securing additional investigation and examination of amended bill of particulars;

12/18/31—Examination of amended bill of particulars;
Drafting letter to attorneys for plaintiff re above;
Drafting letter to defendant re to securing address of Stovall;
Drafting letter to Mr. Worley re to securing data on arrest of Griffin;
12/22/31—Examination of original statements of accident;
Drafting letter to attorneys for plaintiff;
Drafting letter to insurer;
12/26/31—Drafting letter to Walton Stovall, witness, re to securing statement;
12/28/31—Examination of amended bill of particulars;
Drafting letter to attorneys for plaintiff re advising date on better bill of particulars as required;
Drafting stipulation;
12/26/31—Examination of adjuster's file and drafting letter to associate attorneys re to securing additional statement from assured;
12/29/31—Drafting letter to clerk of court re to arrest of Griffin;
1/12/32—Drafting copy of amended declaration;
Drafting letter to insurer re above;
1/18/32—Examination of additional statements of assured;
Drafting letter to local adjusters re to further investigation;
Drafting letter to corresponding attorney in Gainsville, Florida;
1/22/32—Examination of file re to claim of Walton Stovall;
Drafting letter to corresponding attorney re to securing statement from above claimant;
1/18/32—Drafting and preparation of copy of Hatch statement;
Drafting letter to corresponding attorney and forwarding above;
3/18/32—Drafting copies of amended bill of particulars;
Drafting letter to insurer and forwarding above;
4/2/32—Examination of file preparatory to preparation of pleas;
Drafting pleas of defendant;
4/4/32—Examination of pleas as prepared, redrafting and preparation of pleas;
Drafting letter to insurer re to forwarding copy of pleas and statements of witnesses;
116 4/4/32—Drafting letter to attorneys for plaintiff;
Drafting memo to Mr. Fite re additional investigation;
5/23/32—Research of law prepa'tory to argument of pleadings;
5/24/32—Attendance at court and conducting argument of demurrer, motions of plaintiff to pleas of defendant;
5/25/32—Drafting order on demurrer to pleas of defendant;

Fee		$250.00
Expenses:		
7/24/31—Miles Warren preparation of transcript and verification thereof	$19.20	
Baldwin Ins. Co., removal bond	10.00	
7/28/31—Clerk U. S. District Court, costs	115.00	
5/21/31—Expenses G. J. Baya to West Palm Beach to secure statement of Walton Stovall	15.00	
		59.20
		309.20
Less credit by retainer		75.00
		234.20

In Circuit Court of Leon County

[Title omitted.]

Proof of claim

Filed Nov. 21, 1933

STATE OF FLORIDA,
County of Dade, ss:

Before me, the undersigned authority, this day personally appeared George J. Baya, who, being by me first duly sworn, upon oath
117 deposes and says that he is over the age of 21 years; that he is an attorney at law practicing in the courts of the State of Florida, as well as the Federal Courts of said State; that he is a member of the law firm of Snedigar & Baya, Attorneys at Law, Miami, Florida, which is a copartnership consisting solely and only of this affiant and Louis F. Snedigar; that on or about the 30th day of April, 1931, one Charles P. Coleman was insured by New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, under policy #111909, which protected said Charles P. Coleman against public liability and property damage; that on or about said date said New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, employed the aforesaid law firm of Snedigar & Baya to render legal services unto said company and its assured, and to conduct the defense of that certain cause lately pending in the United States District Court for the Southern District of Florida, wherein James Jamison was plaintiff and Charles P. Coleman, was defendant, same being cause #1682–M–Civil; that pursuant to said employment the aforesaid law firm of Snedigar & Baya conducted the defense of said case and made various and sundry journeys and attendances at court and expenditures relating thereto; that at the instance and request of T. A. McNicholas, Special Assistant Deputy Commissioner of Banking & Insurance of New Jersey, the law firm of Snedigar & Baya rendered other and further services in connection with said case, subsequent to May 28th, 1932, as will appear more fully from an attached memorandum of account setting forth a true and correct statement of such additional services rendered by the aforesaid firm of Snedigar & Baya; that by reason thereof

the said New Jersey Fidelity & Plate Glass Insurance Company is indebted unto the aforesaid law firm of Snedigar & Baya in the sum of $100.00; that no part thereof has been paid, nor any security or satisfaction given for the same, and that there are no set-offs against the same; that said memorandum is hereto attached and made a part of this claim. Further this affiant sayeth not.

118 GEORGE J. BAYA.

Sworn to and subscribed before me this 16th day of November, 1933.

[SEAL] CHARLOTTE BILSBROUGH,
Notary Public State of Florida at Large.

My commission expires 9/10/34.

MIAMI, FLORIDA, *June 21, 1932.*

In account with Snedigar & Baya, Attorneys at Law, City National Bank Bldg.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
Newark, N. J.

In re: Our file #5175

James Jamison vs. Charles P. Coleman

6/ 9/32—Drafting and preparation of pleas of defendant;
6/14/32—Drafting letter to assured re advising status of insurer;
6/20/32—Drafting letter to client re advising discontinuance of defense of cases;
Fee, $100.00.

In Circuit Court of Leon County

Proof of claim

Filed Nov. 21, 1933

119 STATE OF FLORIDA,
Dade County, ss:

Before me, the undersigned authority, this day personally appeared George J. Baya, who being by me first duly sworn, upon oath deposes and says that he is over the age of 21 years; that he is an attorney at law practicing in the courts of the State of Florida, as well as the Federal Courts of said State; that he is a member of the law firm of Snedigar & Baya, Attorneys at Law, Miami, Florida, which is a copartnership consisting solely and only of this affiant and one Louis F. Snedigar; that on or about the 30th day of December 1931, one Bernard Hope was insured by New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, under policy

#118048, which protected said Bernard Hope against public liability and property damage; that on or about said date, said New Jersey Fidedity & Plate Glass Insurance Company, a New Jersey corporation, employed the aforesaid law firm of Snedigar & Baya to render legal services unto said company and its assured, and to conduct the defense of that certain cause lately pending in the United States District Court for the Southern District of Florida, wherein N. R. Robinson was plaintiff and Bernard Hope was defendant, same being cause # Civil; that pursuant to said employment the aforesaid law firm of Snedigar & Baya conducted the defense of said case and made various sundry journeys and attendances at court and expenditures relating thereto, all as will more fully appear from an attached memorandum of account setting forth a true and correct statement of all services rendered by the aforesaid law firm of Snedigar & Baya up to and including the 28th day of May 1932; that by reason thereof, the said New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, is indebted unto the aforesaid law firm of Snedigar & Baya in the sum of $298.63; that no part thereof has been paid, nor any security or satisfaction given for the same, and that there are no set-offs against the same; that said memorandum is hereto attached and made a part of this claim. Further this affiant sayeth not.

GEORGE J. BAYA.

Sworn to and subscribed before me this 16th day of November 1933.

[SEAL] CHARLOTTE BILSBROUGH.

Notary Public State of Florida at Large.

My commission expires: 9/10/34.

In account with Snedigar & Baya, Attorneys at Law, City National Bank Bldg.

MIAMI, FLORIDA, *June 13, 1932.*

To NEW JERSEY FIDELITY & PLATE GLASS INS. CO.,
Newark, N. J.

In re: Our file #5247

N. R. Robinson vs. Bernard Hope

12/30/31—Conference with Mr. Fite of Wesley H. Kelley Company re securing copy of summons;
Drafting and preparation of appearance;
Drafting letter to Clerk and forwarding above;
1/4/32—Drafting letter to insurer re to proposed removal of case to Federal court;
1/5/32—Drafting and preparation of copy of declaration;
Drafting letter to insurer and forwarding above;

1/19/32—Drafting and preparation of notice of intention to remove cause;
Drafting removal bond;
Drafting petition for removal;
Drafting order of removal;
Drafting letter to Judge Whitehurst re above;
1/20/32—Drafting letter to Judge Whitehurst re securing date for hearing;
1/21/32—Drafting letter to client;
1/22/32—Conference with assured re to securing execution of petition for removal;
Drafting letter to insurer;
1/25/32—Drafting letter to Judge Whitehurst;
Drafting letter to corresponding attorneys;
1/26/32—Drafting wire to corresponding attorney re to securing appointment with Judge;
Conference with Bonding Company re execution of removal bond.
1/27/32—Conference with Maryland Casualty Company re securing execution of bond;
Drafting wire to Judge re to securing appointment;
Drafting letter to corresponding attorneys and forwarding petition for filing;
121 2/4/32—Drafting letter to Clerk of Court re securing file;
2/8/32—Drafting certificate of clerk;
Drafting letter to Clerk of Court;
2/20/32—Drafting letter to Clerk of Court re to forwarding transcript of record;
3/1/32—Drafting letter to Clerk of Court re to filing of transcript;
3/17/32—Drafting letter to attorneys in Tampa re to above;
Drafting and preparation of demurrer;
Drafting motion to strike;
Drafting motion for better bill of particulars;
Drafting letter to Clerk of Court and forwarding above;
3/29/32—Argument of pleadings before Judge Akerman at Tampa, Florida;
3/31/32—Drafting order on pleadings;
Drafting letter to Clerk of Court and forwarding above;
Drafting letter to insurer and advising status of case;
4/27/32—Examination of file preparatory to preparation of pleas;
4/28/32—Drafting and preparation of pleas of defendant;
Examination of pleas as prepared and correction of same;
Forwarding pleas to Clerk;

Fee	$300.00
Expenses:	
1/27/32—Baldwin Ins. Co., premium on removal bond	$10.00
1/30/32—Fred B. Mellor, exec. bond, etc	5.00

Expenses—Continued.		
2/4/32—Western Union, telegrams		2.58
2/9/32—Southern Bell Tel. Co		.20
2/20/32—E. W. Russell, Clerk, accrued costs at Everglades, Fla		11.20
Preparation of transcript		11.40
2/20/32—Clerk U. S. District Court, Tampa, filing transcript, etc		15.00
3/28/32—Trip (expenses) G. J. Baya, to Tampa, Florida, argument, pleadings		36.16
4/6/32—Western Union, telegrams		1.08
4/6/32—Southern Bell Tel. Company		1.55
4/15/32—Additional expenses—account trip to Tampa, G. J. Baya		3.50
		97.67
Total		397.67
Additional expenses—prints of photographs of cars and scene of accident		.96
		398.63
Credits: By retainer	$100.00	100.00
Balance due		298.63

In Circuit Court of Leon County

[Title omitted.]

122 *Proof of claim*

Filed Nov. 21, 1933

STATE OF FLORIDA,
County of Dade, ss:

Before me, the undersigned authority, this day personally appeared George J. Baya, who, being by me first duly sworn, upon oath deposes and says that he is over the age of 21 years; that he is an attorney at law practicing in the Courts of the State of Florida, as well as the Federal Courts of said State; that he is a member of the law firm of Snedigar & Baya, Attorneys at Law, Miami, Florida, which is a co-partnership consisting solely and only of this affiant and one Louis F. Snedigar; that on or about the 30th day of April 1931 one Charles P. Coleman was insured by New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, under policy 111909, which protected said Charles P. Coleman against public liability and property damage; that on or about said date, said New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, employed the aforesaid law firm of Snedigar & Baya to render legal services unto said company and its assured, and to conduct the defense of that certain cause lately pending in the United States District Court for the Southern District of Florida, wherein James Jamison was plaintiff and Charles P. Coleman was defendant, same being cause #1682-M-Civil; that pursuant to said employment, the aforesaid law firm of Snedigar & Baya conducted the defense of said case and made various and sundry journeys and attendances at court and expenditures relating thereto, all as will more fully appear from

an attached memorandum of account setting forth a true and correct statement of all services rendered by the aforesaid law firm of Snedigar & Baya up to and including the 28th day of May 1932.

123 That by reason thereof, the said New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, is indebted unto the aforesaid law firm of Snedigar & Baya in the sum of $371.66; that no part thereof has been paid, nor any security or satisfaction given for the same, and that there are no set-offs against the same; that said memorandum is hereto attached and made a part of this claim. Further this affiant sayeth not.

GEORGE J. BAYA.

Sworn to and subscribed before me this 16th day of November 1933.

[SEAL]

CHARLOTTE BILSBROUGH,
Notary Public, State of Florida at Large.

My commission expires 9/10/34.

MIAMI, FLORIDA, *June 13, 1932.*

In account with Snedigar & Baya, attorneys at law, City National Bank Bldg.

To NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
Newark, N. J.

In re: Our file #5173

James Jamison vs. Charles P. Coleman

4/30/31—Conference with Mr. Fite, of Wesley H. Kelly Company, re securing copy of summons;
Drafting and preparation of praecipe for appearance;
Drafting letter to Clerk of Court at Vero Beach, Florida, and forwarding above for filing;
5/5/32—Drafting letter to insurer re to advising of above;
6/18/31—Examination of file;
Drafting letter to insurer relative to advisability of removing case to Federal Court;
Drafting wire to Coleman re above;
6/23/31—Drafting and preparation of petition for removal to Federal Court;
Drafting and preparation of bond for removal;
Drafting and preparation of order of removal;
Drafting and preparation of notice on above;
Drafting letter assured and forwarding petition for execution;
Drafting letter to bonding company;
6/24/31—Drafting letter to insurer relative to advising status of case;

124 6/26/31—Drafting letter to assured;
Drafting letter to clerk and forwarding notice of hearing of petition for removal;
Drafting letter to attorneys for plaintiff;
7/1/31—Conference with bonding company relative to securing execution of removal bond;
7/3/31—Attendance at court in Stuart, Florida, relative to securing execution of removal bond;
7/3/31—Attendance at court in Stuart, Florida, relative to presentation of petition to remove case to Federal Court;
7/8/31—Drafting letter to client relative to advising status of case and pleadings;
7/16/31—Examination of transcript of record as prepared and certified;
Conference with Clerk of Federal Court re to filing above;
8/18/31—Examination of file at Clerk's office relative to filing date of transcript of record;
8/25/31—Drafting and preparation of demurrer;
Drafting and preparation of motion to strike parts of declaration;
8/31/31—Drafting letter to attorneys for plaintiff re to argument of demurrer, etc.
11/6/31—Attendance at court on argument of demurrers and other pleadings;
11/16/31—Conference with Judge Ritter re to advising of error in order;
Drafting letter Judge re to above;
11/18/31—Drafting and preparation of corrected order;
Drafting letter to assured;
11/19/31—Conference with Secretary of Judge re to securing appointment;
12/3/31—Drafting letter to insurer re to advising status of case;
1/9/32—Drafting and preparation of copy of amended declaration;
2/1/32—Drafting and preparation of motion for bill of particulars;
Drafting and preparation of motion to strike parts of declaration.
Drafting and preparation of demurrer;
3/7/32—Conference with Clerk of Judge re to securing appointment for argument of pleadings;
Drafting letter to attorneys for plaintiff re to above;
2/23/32—Drafting letter to corresponding attorney re to securing statement;
3/24/32—Drafting letter to corresponding attorney re to securing statement from occupants of car;
3/29/32—Conference with Darwin Hatch at Gainsville, Florida, and securing statement;

4/6/32—Conference with Clerk of Court re to securing appointment:

Drafting letter to attorneys for plaintiff:

5/17/43—Attendance at court on argument of pleadings, same being postponed;

5/24/32—Attendance and conducting argument of demurrers and other pleadings to amended declaration.

5/25/32—Drafting order on demurrer to amended declaration;

5/28/32—Drafting memorandum pertaining to interview with Walton Stovall:

Drafting letter to insurer re to forwarding copy of above and advising status of case.

Fee		$350.00
Expenses:		
7/24/32—Miles Warren, preparation and verification of transcript of record	$19.20	
7/28/31—Baldwin Ins. Co. removal bond	10.00	
7/28/31—Clerk U. S. District Ct. costs	15.00	
6/18/31—Telegram	1.08	
3/29/31—G. J. Baya, expenses to Gainesville	31.94	
4/ 6/31—Postal Telegraph	.94	
4/16/31—Add/expense, trip to Gainesville	3.50	
4/29/31—S. L. Scruggs, investigation at Gainesville	15.00	
		96.66
		446.66
Less credit by retainer—$75.00		75.00
Balance due		371.66

125 In Circuit Court of Leon County

[Title omitted.]

Proof of preferred claim and petition for payment

Filed Feb. 15, 1934

To the Honorable Judge of Said Court:

State of Florida, for the use and benefit of Dade County by Vernon Hawthorne, as State Attorney of the Eleventh Judicial Circuit of Florida in and for Dade County, brings this its sworn proof of preferred claim and petition for payment, and respectfully represents:

1. That in a suit pending in the Circuit Court of Dade County, Florida (Case #112), wherein your petitioner, State of Florida, for the use and benefit of Dade County, was plaintiff, and Harry Doyle, as principal, and the New Jersey Fidelity & Plate Glass Insurance Company, as surety, were defendants, Final Judgment was on the 9th day of November, A. D. 1932, entered against the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, and in favor of the said plaintiff in the principal sum of $100.00 and costs then accrued and taxed at $7.45, which judgment is recorded in Minute Book 69, at page 345 thereof, among the Public Records in the

office of the Clerk of the Circuit Court of Dade County, Florida, as more fully appears by certified copy of said Judgment hereto attached, marked Exhibit "A" and made a part of this petition.

126 2. That said judgment is valid and outstanding, and that no part thereof has ever been paid.

3. That the defendant, Harry Doyle, is insolvent and has no property.

4. That on or about April 6th, A. D. 1933, a request was made on the Honorable W. V. Knott, State Treasurer of the State of Florida, by the Sheriff of Dade County, Florida, for payment of said judgment by the sale of said bonds of the said defendant, New Jersey Fidelity & Plate Glass Insurance Company, deposited with him as State Treasurer, under Section 6302, Compiled General Laws of Florida, 1927, as a prerequisite to its doing business in the State of Florida, or so much thereof as necessary to cover said Judgment and costs, as will more fully appear by a copy of a letter from the Honorable W. V. Knott to W. P. Hughes, United States District Attorney; Honorable Vernon Hawthorne, State Attorney; and Honorable Dan Hardie, Sheriff of Dade County, dated May 23, A. D. 1933, together with a copy of list attached to said letter marked Exhibit "B" and made a part hereof, and copy of letter written by the Honorable Dan Hardie, Sheriff of Dade County, Florida, to the Honorable W. V. Knott, on the 26th day of May, A. D. 1933, marked Exhibit "C", and made a part hereof.

5. That the above-recited claim of the plaintiff, State of Florida, for the use and benefit of Dade County, against New Jersey Fidelity & Plate Glass Insurance Company was reduced to Final Judgment prior to the time Senate Bill #288 amending Section 4340 of the Revised General Statutes of Florida, 1920, the same being Section 6303 of the Compiled General Laws of Florida, 1927, was enacted, and prior to the time that this Court took charge of the Florida assets of said New Jersey Fidelity & Plate Glass Insurance Company thereunder, and consequently is a preferred claim against all of its assets in the hands of Honorable W. V. Knott, as State Treasurer of the State of Florida and/or Honorable D. M.

127 Lowry, as Receiver appointed by Order of this Court therefor, or elsewhere, and entitled to satisfaction and payment in full therefrom.

6. That at the time the Judgment herein was entered, Honorable W. V. Knott, as State Treasurer and Insurance Commissioner of the State of Florida, held the sum of $75,000.00 in bonds or other securities, the property of New Jersey Fidelity & Plate Glass Insurance Company, deposited by it with him as such officer as a legal prerequisite to its doing business in this State, and that the Honorable W. V. Knott, as State Treasurer, or the Honorable D. M. Lowry, as Receiver of this Court of the Florida assets of said defendant, New Jersey Fidelity & Plate Glass Insurance Company, to pay this claim, but notwithstanding this fact has failed, neglected, and refused so to do.

7. Your petitioner further represents that it has filed with the Honorable W. V. Knott, State Treasurer of the State of Florida, at Tallahassee, Florida, and with Honorable D. M. Lowry as Receiver of this Court of the Florida assets of said defendant New Jersey Fidelity & Plate Glass Insurance Company, at Tallahassee, Florida, original copies of this sworn proof of preferred claim and petition for payment thereof, as required by law.

The premises considered, your Petitioner prays:

1. That in any event this instrument be deemed and held to be due and sufficient proof of petitioner's claim against the Florida assets of the defendant, New Jersey Fidelity & Plate Glass Insurance Company, in the hands of Honorable W. V. Knott, as State Treasurer of the State of Florida, and/or Honorable D. M. Lowry, as Receiver of this Court therefor, or elsewhere, as required by law.

2. That the judgment in question, together with all costs accrued, including those necessitated by this procedure and
128 otherwise, be decreed to be a preferred claim against the Florida assets of defendant, New Jersey Fidelity & Plate Glass Insurance Company, in the hands of Honorable W. V. Knott, as State Treasurer of the State of Florida, and/or Honorable D. M. Lowry, as Receiver of this Court therefor, or elsewhere, and entitled to payment in full from the proceeds of the sale thereof.

3. That Honorable W. V. Knott, as State Treasurer of the State of Florida, and/or the Honorable D. M. Lowry, as said Receiver, by Order of this Court be directed, commanded and required to immediately comply with the request for allowance and payment of said Judgment as set forth and shown by this Petition and Exhibits attached to and made a part hereof.

And the Petitioner may have such other and further relief in the premises as equity may require and to this Court shall seem meet.

STATE OF FLORIDA,
For the Use and Benefit of Dade County.
By VERNON HAWTHORNE,
As State Attorney of the 11th Judicial Circuit of Florida, in and for Dade County.

128–A STATE OF FLORIDA,
County of Dade, ss:

Before me personally appeared Vernon Hawthorne, to me well known, who being first duly sworn, deposes and says: that he is State Attorney of the 11th Judicial Circuit of Florida, in and for Dade County; that he prepared and signed the foregoing Petition and knows the contents thereof and that the allegations therein contained are true; that the Judgment set forth therein is just, correct, due and owing, and that no part of the same has ever been paid; further that he did on the 13 day of February, A. D. 1934, deposit in the Post Office of Miami, Florida, in separate envelopes, securely sealed, and on each of which the full legal rate of postage had been paid, original copies of this sworn proof of preferred claim and petition for payment, addressed respectively to:

Hon. W. V. Knott, State Treasurer, Tallahassee, Florida, and Hon. D. M. Lowry, Receiver for New Jersey Fidelity & Plate Glass Insurance Company, Tallahassee, Florida.

VERNON HAWTHORNE,

Sworn to and subscribed before me this 13 day of February, A. D. 1934.

[SEAL] O. L. ELLSWORTH,
Notary Public, State of Florida.

My commission expires: 1/20/37.

129 *Exhibit A*

112

STATE OF FLORIDA

vs.

NEW JERSEY FIDELITY & PLATE GLASS INS. CO.

The defendant surety was called but did not answer.

Whereupon it is considered, ordered, and adjudged by the Court, that the State of Florida, for the use and benefit of Dade County, Florida, do have and recover of and from the defendant, New Jersey Fidelity & Plate Glass Insurance Company, the sum of One Hundred ($100) Dollars, Damages, and the further sum of $7.45, costs by it in this behalf expended. For these sums let execution issue.

130 I, E. B. Leatherman, Clerk of the Eleventh Judicial Circuit Court in and for Dade County, Florida, hereby certify:

That a Final Judgment in the principal sum of $100.00 and the further sum of $7.45 costs, was on the 9th day of November A. D. 1932, entered in a certain suit then pending in the 11th Judicial Circuit Court (Case #112), wherein the State of Florida, for the use and benefit of Dade County, was plaintiff and New Jersey Fidelity & Plate Glass Insurance Company was a defendant;

That hereto above attached is a true and correct photostat copy of the entry of said Judgment as it appears in Minute Book 69, at page 345 of the Public Records in my office as Clerk of said Court.

I further certify that neither said Judgment nor any part thereof has been satisfied of record.

I further certify that in addition to the cost taxed at the time of the entry of Final Judgment, there has accrued the further sum of Ninety cents (.90 cents), the cost of this certificate (in triplicate), and the further sum of $1.50 for the photostat copy (in triplicate) of said Judgment hereto attached and marked "Exhibit A."

Witness my hand and official seal this 13th day of February, A. D. 1934.

[SEAL] E. B. LEATHERMAN,
Clerk of the Circuit Court.
By E. C. DEMEY, D. C.

131 *Exhibit B*

MAY 23, 1933.

Hon. W. P. HUGHES,
United States District Attorney,
Jacksonville, Florida.

Hon. VERNON HAWTHORNE,
State Attorney, Miami, Florida.

Hon. DAN HARDIE,
Sheriff Dade County, Miami, Florida.

GENTLEMEN: Kindly check the enclosed list which includes judgments against New Jersey Fidelity & Plate Glass Insurance Company of Newark, New Jersey, reported to this Department prior to May 19th, 1933, when Mr. D. M. Lowry of Tallahassee was appointed Receiver of said company by the Circuit Court of Leon County under the provisions of Senate Bill #288, Acts of 1933 (copy enclosed), and advise if this list is correct insofar as your office is concerned.

If we have overlooked any judgment against this company reported by you prior to the 19th instant kindly advise at once, giving full particulars.

Thanking you in anticipation of your courtesy.

Yours very truly,

W. V. Knott,
(Signed) W. V. KNOTT,
State Treasurer and Insurance Commissioner.

132 *Final judgments vs. New Jersey Fidelity and Plate Glass Insurance Company, reported to State Treasurer prior to May 19, 1933*

Date of Judgment	Case	Amount	Costs
1932			
	In favor of United States Government:		
Sept. 15	No. 628 M. U. S. Civil		$17.00
" 15	" 631 " " " "		17.00
" 26	" 667 " " " " (Vacated)		
" 26	" 668 " " " "	$500.00	17.00
" 26	" 677 " " " "	100.00	17.00
" 26	" 683 " " " " (Vacated)		
" 26	" 686 " " " "	250.00	
1933			
Jan. 3	" 636 " " " "	1,000.00	17.00
" 3	" 632 " " " "	1,000.00	17.00
" 3	" 630 " " " "	1,000.00	17.00
" 9	" 193 T. U. S. Civil	500.00	
" 9	" 192 " " " "	500.00	
" 9	" 191 " " " "	300.00	
" 9	" 190 " " " "	500.00	
" 9	" 189 " " " "	500.00	
1932			
Dec. 7	" 182 " " " "	250.00	
1933			
Feb. 14	" 395 M. U. S. Civil	3,000.00	19.00
" 14	" 723 " " " "	1,500.00	17.00
" 14	" 735 " " " "	2,000.00	17.00
Mar. 31	" 203 T. U. S. Civil	500.00	
		13,400.00	

(Above evidenced by certified copies of Judgments filed with State Treasurer. The letters "M" and "T" are understood to refer to "Miami" and "Tampa" in which cities the United States District Court for the Southern District of Florida sits. Judgments out of this Court.)

1932	In favor of State of Florida:		
Feb. 9	Case 55	$2,500.00	$7.20
Nov. 9	" 97	500.00	7.45
" 9	" 103	100.00	7.45
" 9	" 108	100.00	7.45
" 9	" 109	100.00	7.45
" 9	" 110	100.00	7.45
" 9	" 111	100.00	7.45
" 9	" 112	100.00	7.45
		3,600.00	

(Above evidenced by executions issued out of Circuit Court of Dade County, Florida, and filed with State Treasurer.)

(Date of Execution)			
1933	State of Florida:		
Feb. 14	Case of John Wilson	$112.35	
" "	" " S. L. Halstead	520.35	Including costs.
" "	" " C. P. Hall	214.35	
" "	" " C. H. Henderson	265.35	
		1,112.40	
Total		18,112.40	231.35

(Above evidenced by letter from Sheriff of Dade County, dated April 6, 1933.)

133 *Exhibit C*

DADE COUNTY, MIAMI, FLORIDA, *May 26th, 1933.*

Hon. W. V. KNOTT,
Treasurer & Insurance Commissioner,
Tallahasee, Florida.

DEAR SIR: Your letter of May 23rd, re judgments against the New Jersey Fidelity & Plate Glass Company of Newark, N. J., has been received. You gave a list of judgments issued out of the Dade County Courts. In addition to these there is one more which is being added and the complete list of judgments is as follows:

Date of judgment	Case of	Amount including costs
2/14/33	John Wilson	$112.35
2/14/33	S. L. Halstead	520.35
2/14/33	C. P. Hall	214.35
2/14/33	C. H. Henderson	265.35
2/14/33	J. W. Williams	520.35

To the amounts shown there will be added interest from the date of judgment to the date judgment is satisfied.

Yours very truly,

DAN HARDIE.
Sheriff Dade County, Florida.

134 In Circuit Court of Leon County

Recitation of claims

#3. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed Claim number 3 on behalf of the State of Florida, for the use and benefit of Dade County, the said claim being a judgment in favor of State of Florida for the use and benefit of Dade County, as plaintiff, and Charles Baker as principal, dated November 9, 1932, in the sum of $100.00, with costs taxed in the sum of $7.45.

#4. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed Claim number 4 on behalf of the State of Florida for the use and benefit of Dade County, the said Claim being a judgment in favor of State of Florida for the use and benefit of Dade County, as plaintiff, and John Frank as principal, dated November 9, 1932, in the sum of $100.00 with costs taxed in the sum of $7.45.

#5. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed Claim number 5 on behalf of the State of Florida for the use and benefit of Dade County, the said Claim being a judgment in favor of State of Florida for the use and benefit of Dade County, as plaintiff, and John Frank as principal, dated November 9, 1932, in the sum of $100.00 with costs taxed in the sum of $7.45.

#6. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed Claim number 6 on behalf of the State of Florida for the use and benefit of Dade County, the said Claim being a judgment in favor of State of Florida, for the use and benefit of Dade County, as plaintiff, and J. W. Williams, as principal, dated February 14, 1933, in the sum of $500.00, with costs taxed in the sum of $6.20.

135 #7. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed claim number 7 on behalf of the State of Florida for the use and benefit of Dade County, the said claim being a judgment in favor of State of Florida for the use and benefit of Dade County, as plaintiff, and Marie J. Roberts as principal, dated November 9, 1932, in the sum of $100.00, with costs taxed in the sum of $7.45.

#8. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed claim number 8 on behalf of the State of Florida for the use and benefit of Dade County, the said claim being a judgment in favor of the State of Florida for the use and benefit of Dade County, as plaintiff, and C. H. Henderson as principal, dated February 16, 1933, in the sum of $250.00, with costs taxed in the sum of $6.20.

#9. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed claim number 9 on behalf of the State of Florida for the use and benefit of Dade County, the said claim being a judgment in favor of State of Florida for the use and benefit of Dade County, as plaintiff, and S. L. Halstead as principal, dated February 16, 1933, in the sum of $500.00 with costs taxed in the sum of $6.20.

#10. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed claim number 10 on behalf of the State of Florida, for the use and benefit of Dade County, the said claim being a judgment in favor of State of Florida for the use and benefit of Dade County, as plaintiff, and John Wilson as principal, dated February 14, 1933, in the sum of $100.00 with costs taxed in the sum of $6.20.

#11. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed claim number 11 on behalf of the State of Flor-
136 ida for the use and benefit of Dade County, the said claim being a judgment in favor of State of Florida for the use and benefit of Dade County, as plaintiff, and John Godd as principal, dated February 9, 1932, in the sum of $2,500.00, with costs taxed in the sum of $7.20.

#12. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed claim number 12 on behalf of the State of Florida for the use and benefit of Dade County, the said claim being a judgment in favor of the State of Florida for the use and benefit of Dade County, as plaintiff, and F. L. Hoffman as principal, dated November 9, 1932, in the sum of $100.00 with costs taxed in the sum of $7.45.

#13. On February 15, A. D. 1934, Hon. Vernon Hawthorne, State Attorney, filed claim number 13 on behalf of the State of Florida for the use and benefit of Dade County, the said claim being a judgment in favor of State of Florida for the use and benefit of Dade County, as plaintiff, and Buck Finch as principal, dated November 9, 1932, in the sum of $100.00 with costs taxed in the sum of $7.45.

137 In Circuit Court of Leon County

[Title omitted.]

Petition of Burbridge Realty Company as preferred claimant

Filed April 19, 1934

Comes now your Petitioner, Burbridge Realty Company, a Florida corporation, by its undersigned solicitor, Otto C. Stegemann, and files with the receiver duly appointed by the Court in the above styled cause, its preferred claim against New Jersey Fidelity and Plate Glass Insurance Company, and respectfully alleges and shows unto this Honorable Court as follows:

I

That on or about the 10th day of April 1931 the defendant, New Jersey Fidelity and Plate Glass Insurance Company, at the instance and request of your petitioner, Burbridge Realty Company, executed as surety a certain supersedeas bond in the sum of $8,000, which bond was duly filed in that certain Chancery cause pending in the Circuit Court of the Eleventh Judicial Circuit in and
138 for Dade County, Florida, docket number 31920-C, wherein the Chase National Bank of the City of New York, and J. H. Therrel, as liquidator of the Bank of Bay Biscayne, were complainants, and Burbridge Realty Company was one of the defendants; that upon the execution of said bond by said defendant, New Jersey Fidelity and Plate Glass Insurance Company, as surety, your petitioner entered into an indemnity agreement with the said surety company for the purpose of indemnifying and saving harmless the said surety company from any loss or liability that may be sustained upon said supersedeas bond, a copy of which agreement is attached hereto and marked "Exhibit A-1."

That under and by virtue of said indemnity agreement your petitioner pledged with said surety company various collateral, which collateral was deposited with the said Miami Beach First National Bank as escrow agent, under an escrow agreement made on April 10th, 1931, between your petitioner and the said surety company, a copy of which escrow agreement is attached hereto, made a part hereof and marked "Petitioner's Exhibit A." That at the time of the depositing of said collateral with said bank as escrow agent, as aforesaid, the said certificate of deposit for $2,000.00, dated April 11, 1931, referred to in paragraph marked and numbered 5 of said escrow agreement, a copy of which certificate of deposit is attached hereto and marked "Petitioner's Exhibit B", was delivered to said surety company, and receipted for by Edward L. Semple, as agent and attorney in fact for said surety company, and said receipt for said certificate of deposit was deposited with the said escrow agent, together with the other collateral referred to in said escrow agreement. A copy of said receipt is attached hereto and marked "Petitioner's Exhibit C."

That thereafter and on April 14th, 1931, the said surety Company, by and through its General Agents, Bonding Co., Inc., exchanged the said certificate of deposit for cash and retained said cash in the sum of $2,000.00, and under said indemnity agreement and receipt as aforesaid, the said sum of $2,000.00 was to be
139 held by said surety company in trust for your petitioner until such time as said supersedeas bond aforementioned shall be cancelled or until said surety shall be released or discharged from any and all liability upon said bond, and upon the cancellation of said bond or the release and discharge of said surety company upon said bond the said sum of $2,000.00 was to be released and returned to your petitioner.

That the said surety company held said sum of $2,000.00 as trustee for your petitioner and, on information and belief, deposited the said trust fund in its general reserve.

II

Your petitioner further alleges and shows unto this Honorable Court that thereafter the said supersedeas bond in the sum of $8,000.00 above referred to, was duly cancelled and the said surety company, the New Jersey Fidelity and Plate Glass Insurance Company, was duly released and discharged of any and all liability or obligation upon said supersedeas bond; that proper and sufficient proof and conclusive written evidence of the cancellation of said supersedeas bond and the release and discharge of said surety company upon said supersedeas bond was duly furnished to said surety company by your petitioner, and that by reason thereof your petitioner became entitled to receive all the moneys and collateral theretofore furnished to and deposited with said New Jersey Fidelity and Plate Glass Insurance Company by your petitioner under said indemnity agreement and under said escrow agreement as aforesaid; that thereafter the said surety company caused to be released to your petitioner the collateral deposited with the Miami Beach First National Bank under said escrow agreement as aforesaid, but the said surety company failed and refused to return and release to your petitioner the said sum of $2,000.00 theretofore deposited with it in trust as aforesaid, except the sum of $1,100.00; and that
140 although frequently demanded, the said defendant, New Jersey Fidelity and Plate Glass Insurance Company, has failed and refused to restore and release to your petitioner the balance of said trust funds remaining in its hands, to wit: the sum of $900.00, which funds belong to your petitioner, together with lawful interest thereon; that all the assets and funds of said surety company in the State of Florida have come into the hands and possession of the receiver, heretofore appointed by this Court, and said receiver now has in his possession the trust funds belonging to your petitioner.

III

That said surety company has not executed or written any other bonds or undertakings for your petitioner and that there is no bond, undertaking, or obligation outstanding upon which there has been, is or may be any liability of any kind on the part of said surety company. That your petitioner has paid to said surety company all money due for the writing of said supersedeas bond hereinabove described and that your petitioner is not indebted to said surety company in any amount whatsoever. That there are no just set-offs or counter-claims to your petitioner's said claim hereinabove set forth.

IV

By reason of the foregoing, your petitioner claims a lien upon the general assets of the said surety company and claims a lien particularly upon the moneys or securities now held by the defendant, Honorable W. V. Knott, as State Treasurer and ex-officio Insurance Commissioner of the State of Florida, deposited with said State Treasurer by the said surety company as aforesaid, and your petitioner further claims that the said lien has priority over the claims of general creditors against said assets of said surety companay and against said fund or securities held by the said State Treasurer of the State of Florida aforesaid.

V

Your petitioner further alleges and shows unto this
141 Honorable Court that on or about the 24th day of December, 1932, your petitioner duly filed with the complainant, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey and as liquidator of the defendant, New Jersey Fidelity and Plate Glass Insurance Company, written notice and proof of its said preferred claim as aforesaid, a copy of which notice and proof of claim is attached hereto, made a part hereof and marked "Exhibit D–1, 2, 3, and 4", and also filed with J. K. Ricketts, the local agent and representative of said liquidator of said surety company in Miami, Florida, all documents necessary to sustain and prove your petitioner's claim, which said documents the said agent, J. K. Ricketts, delivered and turned over to the said complainant as liquidator of said surety company, as shown by copy of letter of said J. K. Ricketts to said surety company, dated December 24, 1932, attached hereto, made a part hereof and marked "Exhibit E."

That since the filing of said claim the said complainant, William H. Kelly, as liquidator of said surety company, has failed and refused to pay your petitioner's said claim, but instead had instituted one of the above-styled causes for the purpose of having the claims of all creditors in the State of Florida adjudicated by this Court.

Wherefore, your petitioner respectfully prays as follows:

1. That this Honorable Court take cognizance of and adjudicate your petitioner's said claim.

2. That a final decree be entered herein decreeing that the said surety company, New Jersey Fidelity and Plate Glass Insurance Company, held the said sum of $900.00 as trustee in favor of your petitioner and that said fund be declared to be a trust fund belonging to your petitioner and that all the assets of said surety company, now in the hands and possession of the receiver, or a sufficient part thereof, be impressed with a lien in favor of your petitioner for the said sum of $900.00, together with lawful interest thereon, and that
142 the said lien of your petitioner be declared to have priority over the claims of general creditors.

OTTO C. STEGEMANN,
Solicitor for Petitioner, Burbridge Realty Company,

[*Duly sworn to by Wm. Burbridge, jurat omitted in printing.*]

Exhibit A–1

New Jersey Fidelity & Plate Glass Insurance Company, Newark, New Jersey

Third Party Indemnity Agreement for All Kinds of Bonds.

Know All Men by These Presents, That whereas, at the request of the undersigned, hereinafter referred to as indemnitors and upon condition that this instrument be executed, the New Jersey Fidelity & Plate Glass Insurance Company, hereinafter referred to as the Company, a corporation of the State of New Jersey, has executed, or procured the execution of, or is about to execute or procure the
143 execution of, a bond or bonds on behalf of Burbridge Realty Company hereinafter referred to as principal, and in favor of Chase National Bank et al., copy or copies of which may be hereto attached.

And whereas, the indemnitors have requested and do hereby request the Company, if the said bond be a bail bond to be filed in, or given in connection with a suit, action, or judicial proceeding, to execute, or procure the execution of any other bond or bonds that may be applied for by the principal in connection with the same charge or in connection with the same suit, action, or proceeding, whether such bond is to be filed in the original proceeding or on appeal or whether in the same or a different court and regardless of any change in the parties to said suit, action, or proceeding.

And whereas the indemnitors have a substantial material and beneficial interest in the obtaining of the said bond or bonds.

Now, therefore, in consideration of the premises and the sum of One Dollar ($1.00) this day paid by the Company to each of the indemnitors receipt of which is hereby acknowledged the indemnitors, and each of them, for themselves, their and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, do hereby covenant and agree:

1. To pay, or cause to be paid, the premium or premiums for said bond or bonds in strict accordance with the terms of the application, a copy of which is, or may be, hereto attached as a part of this instrument, or of any other agreement made, or that may be made, between the principal and the Company or the surety or sureties executing such bond or bonds.

2. To indemnify the Company from and against any and all liability, loss, costs, damages, attorney's fees, and expenses of whatever kind or nature which the Company may sustain or incur by reason or in consequence of executing any such bond or bonds as surety or co-surety or procuring, upon its full indemnity, the execution thereof as aforesaid, and which it may sustain or incur in making any investigation on account of any such bond or bonds, in de-

fending or prosecuting any action, suit, or other proceeding which may be brought in connection therewith, in obtaining or attempting to obtain a release from liability under any such bond or bonds, and, if any such bond be a bail bond, in locating, extracting, and surrendering the person bailed; and to indemnify the Company to the full amout of liability, loss, cost, damages, attorneys' fees, and expenses as aforesaid, regardless of any reinsurance that may be carried on such bond or bonds, it being the object and intent hereof that this instrument shall protect, in the name of the Company, any and all surety or reinsuring companies that may assume reinsurance upon any such bond or bonds; and in like manner, to indemify such other surety or sureties as the Company has procured or may procure, otherwise than upon its full indemity, to execute or to join with it in executing any such bond or bonds, it being agreed that this instrument shall inure to the benefit of any such surety or sureties, so as to give it or them a right of action hereunder.

3. That any property of any kind which may have been, or may hereafter be, pledged as collateral security on any one or more of such bonds may, at the option of the Company, be reclaimed as collateral security on any or all bonds coming within the scope of this agreement, whether theretofore or thereafter executed and whether executed by the Company or any other surety or sureties, and for the full and complete performance in all respects of the covenants of the indemnitors under this agreement; and in the case of any breach of the covenants of the indemnitories, or in case the company should deem it advisable to raise money for the purpose of meeting any actual or prospective claim or demand under any such bond or bonds or to pay any expenses incurred or to be incur-
144 red in connection therewith, or in case the company should be of opinion that said property is likely to so decline in market value that the security to the company will be inadequate, the company shall have full power and authority, without notice to the indemnitors or any of them, to sell, assign, and deliver said collateral, or any part thereof at public or private sale at the option of the company, its successors or assigns, with the right to be the purchaser itself at any sucht public sale, and to use all of the proceeds or such part thereof as may be necessary, in order to protect itself and any other surety or sureties executing any such bond or bonds against loss, costs, damages, attorneys' fees, and expenses as aforesaid; and, after deducting all legal and other costs and expenses of such sale, and all such loss, costs, damages, attorneys' fees, and expenses as aforesaid, and all premiums due the company or any such surety or sureties for any such bond or bonds, shall return the remainder of such collateral or the proceeds of sale, if any, to the person or persons legally authorized to receive the same; provided the surety shall not be responsible for any loss resulting to the said property from any cause other than the act or neglect of its officers or employees.

4. That the surety or securities executing any such bond or bonds shall have the right, and such surety or sureties are hereby authorized, but not required—

a. If any such bond or bonds be given in connection with a contract, to consent to any extensions, modifications, changes, or alterations of, or additions to, the contract and the plans and specifications therein referred to, and, from time to time, make advances or loans to the principal for the purposes of the contract, without the necessity of seeing to the application thereof, it being hereby agreed that the amount of such advances or loans shall be conclusively presumed to be a loss hereunder; and to take possession of the work under such contract in event of any abandonment or forfeiture of such contract or of any breach thereof or of such bond or bonds, and, at the expense of the indemnitors, to complete, or to contract for the completion of, the same, or to consent to the reletting or completion thereof by the owner;

b. If any such bond or bonds be filed in, or given in connection with a suit, action, or proceedings in any court, to recognize any attorney or attorneys appearing of record in such suit, action, or proceeding for any part thereto at the date of the execution of said bond or bonds, as the authorized representative of said party or parties with full and ample date of the execution of said bond or bonds, as the authorized representative of said party or parties with full and ample authority to act for such party or parties throughout such suit, action, or proceeding and throughout any and all appeals therein, until the surety or sureties shall have been fully discharged from liability under said bond or bonds;

c. To attach hereto copy or copies of said application or of such bond or bonds, to fill up any blanks left herein, and to correct any errors in filling up any blanks herein, it being hereby agreed that such copy of copies, when so attached, and that such insertions and corrections, when so made, shall be prima facie correct;

d. From time to time to increase or decrease the penalty or penalties of said bond or bonds, to charge the obligee or obligees therein, and to execute, from time to time, any continuances, enlargements, modifications, and renewals of any such bond or bonds, or any substitutes therefor, with the same or different conditions, provisions, and obligees, and with the same or larger or smaller penalties, it being hereby agreed that this instrument shall, in all its terms, apply to and cover any and all such new or changed bonds or renewals.

145 e. To take such steps as it or they may deem necessary or proper to obtain release from liability under any such bond or bonds, including the right, if said bond be a bail bond, to surrender the person bailed at any time either before or after default;

f. To adjust, settle, or compromise any claim, demand, suit, or judgment upon any such bond or bonds, unless the indemnitors shall request such surety or sureties to litigate such claim or demand, or to defend such suit, or to appeal from such judgment, and shall,

simultaneously with such request, deposit with such surety or sureties collateral satisfactory to it or them, sufficient to pay any judgment or judgments rendered, or that may be rendered, with interest, costs, expenses, and attorneys' fees.

5. If any such bond be given in connection with a contract, to assign, transfer, and set over, and the indemnitors do hereby assign, transfer, and set over, to the surety or sureties executing said bond or bonds, such assignment to become effective as of the date of said bond or bonds, but only in the event of any such abandonment, forfeiture, or breach as aforesaid—

a. All their right, title, and interest in and to all machinery, plant, tools, and materials which are now or may hereafter be upon the site of the work embraced in such contract, or elsewhere for the purposes thereof, including all materials purchased or ordered for said contract, whether such materials be completely manufactured or not;

b. All their right, title, and interest in and to any and all subcontracts let or which may be let in connection with such contract;

c. Any and all percentages of the contract price retained on account of said contract, and any and all sums that may be due under said contract at the time of such abandonment, forfeiture, or breach, or that thereafter may become due;

d. All their rights in, and growing in any manner out of, said contract or said bond or bonds.

6. That liability hereunder shall extend to and include the full amount of any and all money paid by the surety or sureties executing any such bond or bonds in settlement or compromise of any claims, suits, and judgments thereunder in good faith under the belief that it or they were liable therefor, whether liable or not, as well as of any and all disbursements on account of costs, attorneys' fees and expenses as aforesaid, which may be made under the belief that such were necessary, whether necessary or not.

7. That in the event of payment, settlement, or compromise of liability, loss, costs, damages, attorneys' fees, expenses, claims, demands, suits, and judgments as aforesaid, in connection with any such bond or bonds, an itemized statement thereof, sworn to by an officer or officers of the surety or sureties making such payment, settlement, or compromise, or the voucher or vouchers, or other evidence of such payment, settlement, or compromise, shall be prima facie evidence of the fact and extent of the liability of the indemnitors in any and all claims or suits hereunder.

8. That in the event the surety or sureties executing any such bond or bonds should deem it necessary or proper in order to comply with the law or with the regulations of the Insurance Department of any State, to set aside as loss reserve an amount to cover any judgment that may have been rendered against the principal, with interest and costs or to cover any unadjusted claim or claims under said bond or bonds, the indemnitors will immediately upon demand and notwithstanding and further proceedings that may have been taken, or that

may be contemplated, by the principal, and notwithstanding the pendency of an appeal, deposit with said surety or sureties an amount of money sufficient to cover such judgment, with interest and costs, or such claim or claims, such sums to be held by said surety or sureties as collateral security on said bond or bonds with the right on the part of the surety or sureties at any time to sue such sum, or
146 any part thereof, in the payment of such judgment or in the settlement of such claim or claims; and the said indemnitors, in the event of their failure to comply with such demand, hereby authorize and empower any attorney of any court of record in the United States, or any of its territories or possessions, to appear for them or any of them in any suit or suits by the surety or sureties executing said bond or bonds and to confess judgment against them or any of them for any sum or sums of money up to the amount of said bond or bonds, with costs and interests and a reasonable attorneys' fee; such judgment, however, to be satisfied upon the payment of any and all such sums as may be found to be due by the indemnitors to such surety or sureties under the terms of this agreement. Demand upon the indemnitors shall be sufficient if sent by registered mail to each indemnitor at the address given by him or here to the Company, or at his or her address last known to the Company, whether actually received or not.

9. That if the surety or sureties executing any such bond or bonds shall bring suit, action, or proceeding to enforce any of the covenants of agreements herein contained, the costs, charges, and expenses, including attorneys and counsel fees, incurred by such surety or sureties in prosecuting such suit, action, or proceeding shall be included in any judgment or decree that may be rendered against the indemnitors therein.

10. To waive and do hereby waive—the execution of this bond by the principal and—

a. All right to claim any of their property, including homestead, as exempt from levy, execution or sale, or other legal process, under the laws of any state or states:

b. Any defense based upon the execution of this agreement subsequent to the date of any such bond or bonds, the indemnitors admitting and covenanting that the execution of any such bond or bonds by the surety or sureties was in pursuance of the previous request of the indemnitors:

c. Notice of any breach or breaches of any such bond or bonds or of any contract or contracts in connection with which such bond or bonds may have been given, or any act or default that may give rise to claim hereunder:

d. Any right to ask or require the surety or sureties executing any such bond or bonds to remove or join in any application for the removal of any proceeding from a state court to a federal court:

e. Notice of the acceptance of this obligation and of execution of any such bond or bonds.

11. That nothing herein contained shall be considered or construed to waive, abridge, or diminish any right or remedy which the surety or sureties executing any such bond or bonds might have if this instrument were not executed.

12. That the liability of the indemnitors hereunder shall not be effected by any alleged agreement or promise, written, oral, or implied, for other indemnity, or for other security by collateral or otherwise; nor by the release of any indemnity or security that may have been taken by, or the return or exchange of, any collateral that may have been deposited with the surety or sureties executing any such bond or bonds, the indemnitors hereby consenting to any such release, return, or exchange; and if any indemnitor signing this agreement is not bound for any reason or is or shall become released, this obligation shall still be binding upon each and every other indemnitor, and the liability of the indemnitors hereunder shall continue so long as the liability of the surety or sureties under such bond or bonds shall continue and until satisfactory evidence of discharge or release of such liability shall have been furnished to the Company.

147 13. That separate suits may be brought hereunder as causes of action accrue, and suit may be brought against all of the indemnitors or any one or more of them; and the bringing of suit or suits upon one or more causes of action, or against one or more of the indemnitors, shall not prejudice or bar the bringing of subsequent suits against all the indemnitors, or any one or more of them on any other cause or causes of action, whether theretofore or thereafter accruing.

14. That the Company is not obligated to execute any such bond or bonds or procure the execution thereof either upon its full indemnity or otherwise; and any attempt on the part of the Company to secure cosuretyship or reinsurance on any such bond or bonds shall be as agent for the indemnitors and such attempt shall not impose upon the Company any separate and independent liability whatsoever.

15. That this instrument shall be liberally construed as to fully protect the Surety or Sureties executing any such obligation or obligations.

16—

In testimony whereof, the indemnitors have hereunto set their hands and affixed their seals this 10th day of April, 1931.

[CORPORATE SEAL] WM. BURBRIDGE. [SEAL]

P. O. Address: 2848 Prairie Avenue,
Miami Beach, Florida.

——— ———[SEAL]

P. O. Address: ——— ———

——— ———[SEAL]

Signed, sealed, and delivered in the presence of—

LILLIAN A. MARTIN.

MARIAN TIDWELL.

STATE OF ————,
County of ————, *ss:*

On this ——— day of ——— 19—, before me personally came ———— to me known to me to be the individual described in and who executed the foregoing agreement, and acknowledged that he executed the same.

STATE OF FLORIDA,
County of Dade, ss:

On the 14th day of April, in the year 1931, before me personally came Wm. Burbridge, to me known, who being by me duly sworn, did depose and say: that he resides in Miami Beach, Florida, that he is the President of the Burbridge Realty Company, the corporation described in and which executed the foregoing instrument;
148 that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

[SEAL] MAUDE MILDRED HADEN,
Notary Public in and for the State of Florida at large.
My Commission expires; Aug. 1, 1933.

STATE OF FLORIDA,
County of ————, *ss:*

On this ———— day of ———— 19—, before me personally came ———— to me known and known to me to be a member of the firm of ———— described in and who executed the foregoing agreement, and acknowledged that he executed the same as and for the act and deed of said firm.

Exhibit A

APRIL 10, 1931.

THE MIAMI BEACH FIRST NATIONAL BANK,
Miami Beach, Florida.

GENTLEMEN: Please find herewith enclosed:

1. A copy of a bond, of even date, executed by Burbridge Realty Company, as Principal, hereinafter referred to as "Indemnitor", and New Jersey Fidelity and Plate Glass Insurance Company, as surety, in the sum of $8,000.00, for the supersedeas of a certain Decree, dated March 19, 1931, of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, in Chancery No. 31920-C.

2. A note, of even date, in the sum of $6,000.00, made by Ray Corporation, payable to the order of said surety.

3. A Mortgage Deed, of even date, from said Ray Corporation, to said surety, securing said note, and containing the terms of an agreement of Indemnity to the said surety.

4. An Indenture of Lease, of even date, between said Indemnitor as lessor, and Farber Burbridge, as Lessee, for the term of two years, of the Ansonia Apartments, 318 21st Street, Miami Beach, Florida, reserving $6,000.00 as rents of said premises assigned by the said Indemnitor to the said surety, as further security for the said agreement of indemnity.

5. Money in the form of a certificate of deposit, dated April 11, 1931, of yourselves, in the sum of $2,000.00, by the said Indemnitor, endorsed to the order of yourselves, also as further such security. This delivered direct to surety and receipt therefor is handed you herewith.

The said Surety will also deliver to you promptly, the following:

149 6. A Satisfaction piece of said note and mortgage, of even date.

7. A Satisfaction piece of said assignment of rents, of even date.

The undersigned, Ray Corporation, is the owner of the lands encumbered by said mortgage, and has, therefore, joined in this escrow agreement, but the purpose of the agreement is for the said Burbridge Realty Company to secure the faithful performance of its agreement to fully idemnify and save harmless the said New Jersey Fidelity and Plate Glass Insurance Company of and from any suits or actions, and loss or damage, whatsoever, because of said Supersedeas Bond.

And you are, therefore, directed as follows:

a. When you shall have received the two instruments mentioned in items 6 and 7 hereinabove, duly executed, attested and acknowledged, as provided by law for instruments to be recorded in the Public Records of Dade County, Florida, you shall promptly thereafter have duly recorded in the Public Records of Dade County, Florida and returned to your custody, the said Mortgage Deed.

b. The said indemnitor shall cause the rents so assigned to said surety to be promptly paid over to you when the same shall become due and payable, and the proceeds you shall keep in your custody and dispose of as hereinafter set forth.

c. If, at any time, any of the terms, conditions, and covenants by the said indemnitor, mortgagor or leassee, on their part to be observed and performed, shall not be promptly observed and performed, and there shall not have been received by you hereunder the full sum of $8,000.00, then, in any of such events, on demand therefor, you shall promptly deliver to the said surety the said mortgage, satisfaction piece thereof, note, lease, and assignment of rents payable thereunder, satisfaction piece of said assignment, and all moneys that shall have been received by you hereunder.

d. If, at any time, there shall have been received by you hereunder the full sum of $8,000.00, then, in that event, on demand therefor, you shall promptly deliver to the said indemnitor all the said instruments mentioned in paragraph c hereof.

e. And, if the said agreement of indemnity shall be cancelled, and the said indemnitor shall not then in anywise be in default there-

under, or if all of the terms, conditions, and covenants by the said indemnitor on its part to be observed and performed thereunder, shall be fully observed and performed, then, in either of such events, on demand therefor, you shall promptly deliver to the said indemnitor, all the instruments mentioned in paragraph c hereof, together with all moneys that shall have been received by you hereunder.

f. Not only is the said certificate of deposit regarded as money for the purpose of this agreement, but also the interest that shall accrue thereon, as well as any other income that may be derived from any securities hereof.

g. You shall endorse the said certificate of deposit to the said indemnitor or surety, as the case may be, according to which of the two you shall deliver the same hereunder.

h. The said indemnitor may pay over to you at any time such a sum of money as together with other sums then in your custody hereunder shall equal the sum of $8,000.00, and if it shall do so, you shall thereupon forthwith deliver to it all the said instruments mentioned in paragraph c hereof.

i. The moneys, or any part thereof not less than $1,000.00 may be received by you hereunder, may be put in the form of your certificate of deposit by the said indemnitor, to bear interest at such rate as shall then be established for such character of deposits, and the same
150 shall be endorsed as is provided herein for the endorsement of the certificate in the principal sum of $2,000.00 aforesaid.

BURBRIDGE REALTY COMPANY,
[SEAL] By WM. BURBRIDGE, *President.*
(*Indemnitor*).

RAY CORPORATION,
[SEAL] By FARBER BURBRIDGE, *President.*
NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY,
By E. L. SEMPLE, *Its Attorney in Fact.*
(*Surety*).

APR. 13, 1931.

Accepted this date, Miami Beach First National Bank.
JOHN J. HUTCHESON,
Vice Pres.

Exhibit B

No. 237 MIAMI BEACH, FLA., *Apr. 11, 1931.*
$2,000.00.

This certified that Burbridge Realty Company has deposited in the Miami Beach First National Bank exactly *exactly* two thousand dollars 00 cents exactly dollars, payable to the order of themselves on the return of this certificate properly endorsed, with interest at the rate of 1½ percent per annum for all full months if left three months

or longer, reserving the right of thirty days' notice, interest to cease after one year from date.

Not subject to check.

(Signed) JOHN J. HUTCHESON,
Cashier.

Reverse side of Certificate: Pay to order of New Jersey Fidelity and Plate Glass Insurance Company. Burbridge Realty Co. (signed) Wm. Burbridge, Pres. New Jersey Fidelity & Plate Glass Insurance Co., by Bonding Co., Inc., General Agts., by (signed) Richard I. Buersy, Treas.

151 Paid Through Miami Clearing House, Apr. 14, 1931.

The Third National Bank, 63-454 of Miami, Florida, 63-454.

Paid.

4-14-31.

63-360 (M. B. First Nat'l. Bank).

Exhibit C

Temporary Collateral Receipt. Receipt for collateral.

Original.

New Jersey Fidelity & Plate Glass Insurance Co., Newark, New Jersey.

File No.

Report or Bond No. ——, Agency Bonding Company, Inc.

Principal, Burbridge Realty Co.

Kind of Bond, Supersedeas.

Received from The Miami Beach First Nat'l Bank.

Property of Burbridge Realty Co., Owner Same.

Owner's Address 1000 Lincoln Rd. Bldg., Miami Beach, Fla.

the following:

Certificate of deposit of The Miami Beach First Nat'l Bank, By Burbridge Realty Co., dated April 11th, 1931, #237, in the sum of Two Thousand and 00/100 Dollars ($2,000.00), endorsed to New Jersey Fidelity & Plate Glass Ins. Co. as part collateral to secure loss because of execution of supersedeas bond.

As collateral security on the above-mentioned bond or undertaking, and any other bonds or undertakings written by the New Jersey Fidelity & Plate Glass Insurance Company for the said principal; and for the performance of all agreements in connection with said bonds or undertakings; it being understood that the said collateral, or any substituted securities, will be released to said owner upon delivery to the Company of conclusive written evidence of the termination of its liability on each and all of said bonds or undertakings. The New Jersey Fidelity & Plate Glass Insurance Company shall not be responsible for loss resulting to the above

described security from any cause other than the act or neglect of its officers or employees.

Dated this 13th day of April 1931.

152 NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY.

By (Signed) E. L. SEMPLE, [SEAL]
Agent at Miami, Fla.

Exhibit D-1

Burbridge Realty Company, A Florida corporation, propounds and files with the Liquidator of New Jersey Fidelity & Plate Glass Insurance Company its secured and preferred claim as follows:

On April 13, 1931, Burbridge Realty Company, as Principal and New Jersey Fidelity & Plate Glass Insurance Company, as Surety, executed a bond required by the Order of the Circuit Court in and for Dade County, Florida, in that certain cause then pending between The Chase National Bank of the City of New York, Complainant, and the said Burbridge Realty Company and others, Defendants, to supersede an interlocutory decree dated March 19, 1931, adverse to the said Burbridge Realty Company pending an appeal from said Order to the Supreme Court of Florida; as an indemnity to the said Surety for any loss that is might sustain because of said Surety Bond, the said Surety required of the said Burbridge Realty Company, and the said Burbridge Realty Company did, before the execution of said Surety Bond, deliver to the said Surety the sum of $2,000.00; thereafter the obligee of said Surety Bond, The Chase National Bank of the City of New York, did assign, transfer, set over, and deliver to J. H. Therrell, as Liquidator of the Bank of Bay Biscayne, a Florida corporation, all of the said obligee's rights in and to said supersedeas bond; thereafter by an agreement duly entered into by and between the Principal and Surety of said supersedeas bond and the said assign of the rights of the said obligee itself thereunder, the said supersedeas bond was canceled and discharged; and only $1,100.00 of the said $2,000.00 has been restored to the said Burbridge Realty Company, and the balance, $900.00, together with interest thereon, is wholly unpaid, after allowing all just off-sets and credits.

All of the documents sustaining this claim were by the claimant caused to be delivered to J. K. Ricketts, the resident representative of the Liquidator of the said Surety, in Miami, Florida, and by him in turn delivered to the Liquidator himself at 271 Market Street, Newark, New Jersey, where they now are.

By FARBER BURBRIDGE, *Sec'y Treas.*,
[CORPORATE SEAL] BURBRIDGE REALTY COMPANY,
Ten Hundred Lincoln Road,
Miami Beach, Florida, Dade.

He is Sec'y-Treas. of preferred and secured.

BURBRIDGE.

Ten Hundred Lincoln Road, Miami Beach, Florida, Florida.
FARBER BURBRIDGE,
BURBRIDGE REALTY COMPANY,
REALTY COMPANY.
24th DECEMBER, 2.

FARBER BURBRIDGE,
Secy.-Treas. of Burbridge Realty Company.
[N. P. SEAL] MAUDE MILDRED HADEN,
Notary Public for the State of Florida at Large.
My Commission Expires Aug. 1st, 1933.

Exhibit D–2

DECEMBER 10, 1932.

Hon. WM. H. KELLY,
Commissioner of Banking and
Insurance for the State of N. J.
153 *271 Market Street, Newark, N. J.*

DEAR SIR: As attorneys representing Burbridge Realty Company, we wish to file a claim with you against the New Jersey Fidelity and Plate Glass Insurance Company, which company we understand is in liquidation.

Kindly mail to us at once proper blank forms for making out this claim.

Very truly yours,

COPELAND AND THERREL.

CT:MT

Exhibit D–3

JANUARY 20, 1933.

HON. WM. H. KELLY,
Commissioner of Banking and Insurance for the State of N. J.,
271 Market Street, Newark, N. J.

SIR: On December 24th, 1932, we forwarded to you, by Registered Mail, claim of Burbridge Realty Company against New Jersey Fidelity and Plate Glass Insurance Company. We have received no acknowledgment of the receipt of this claim, nor any advice from you, or anyone else, as to what we may expect insofar as this claim is concerned. We would appreciate very much your advising us by return mail that said claim has been received, and also what we may expect insofar as the settlement is concerned.

Very truly yours,

COPELAND AND THERREL.

CT:MT

Exhibit D–4

JANUARY 30, 1933.

HON. WM. H. KELLY,
Commissioner of Banking and Insurance for the State of N. J.,
154 *271 Market Street, Newark, N. J.*

SIR: We wish to respectfully refer you to our letter of January 20, 1933, wherein we requested an acknowledgment from you of the receipt of the claim of Burbridge Realty Company against New Jersey Fidelity and Plate Glass Insurance Company, and also advice from you as to what was being, or would be, done regarding the settlement of this claim. Your acknowledgment of our communications and information as to the matters requested of you will be greatly appreciated.

Very truly yours,

COPELAND AND THERREL.

CT:MT
Registered mail.
Return receipt requested.

Exhibit E

P. O. Box # 356, MIAMI, FLA.,
December 24, 1932.

MR. P. L. DOUGLASS,
New Jersey Fidelity & Plate Glass Ins. Co.,
271 Market Street, Newark, N. J.

DEAR DOUGLASS: Mr. Catchings Therrel phoned me this morning relative to the filing of a proof of claim in the matter of Burbridge Realty Company; he informed me that the balance, $1,000.00, originally claimed by the Burbridge Realty has been reduced by a payment of $100.00, received from Mr. Semple, thus reducing their claim to $900.00, for which amount he is this day forwarding the proof of claim to the Liquidator.

Mr. Therrel further called my attention to the matter of documentary proof of the proper release of the bond, et cetera, stating he would say in his proof of claim that these papers were delivered into my custody. I would therefore refer you to my letter of October 6th, enclosing the original release given by the Chase National Bank of New York to the Burbridge Realty Company, and to my letter of October 25th, in which I enclosed a release signed by J. H. Therrel as Liquidator of the Bank of Bay Biscayne.

I trust with this explanation there will be no difficulty with the proof of claim mentioned.

Yours very truly,

(Signed) J. K. RICKETTS.

JKR/M
CC to Catchings Therrel, Esq., 1000 Lincoln Rd., Miami Beach, Fla.

155 In Circuit Court of Leon County

Claim of The Barnett National Bank of Jacksonville, Jacksonville, Florida

Filed May 8, 1934

STATE OF FLORIDA,
County of Duval, ss:

Now comes The Barnett National Bank of Jacksonville, a corporation organized under the laws of the United States and having its principal place of business at Jacksonville, Duval County, Florida, and files this its claim against the assets of New Jersey Fidelity & Plate Glass Insurance Company now in the hands of the Honorable D. M. Lowry, Receiver of said company, duly qualified and acting as such under the laws of Florida, in the sum of Five Hundred Dollars ($500.00) principal amount due under that certain bond dated the 4th day of February, A. D. 1932, in favor of The Widening Company, a corporation, as obligee and signed by Empire Realty Securities Corporation as principal and New Jersey Fidelity & Plate Glass Insurance Company as surety, said bond being in the sum or $500.00; that copies of said bond and the note, payment of which is guaranteed by said bond, are hereto attached and made a part of this claim, and incorporated herein fully and to the same extent as if a part hereof; that the note, payment of which was guaranteed by said bond, was duly assigned and endorsed over to said The Barnett National Bank of Jacksonville, by endorsement appearing on the reverse side thereof as follows, to-wit: "The Widening
156 Company by F. H. Rand, Jr., President"; that said The Barnett National Bank of Jacksonville is now the owner and holder of said note and files this its claim as such assignee; that the maker of said note and principal on said bond, Empire Realty Securities Corporation, has defaulted in payment of said note, and has paid no sums whatsoever either on principal or interest; and that there is now due said The Barnett National Bank of Jacksonville the principal sum of Five Hundred Dollars ($500.00) on said note, together with interest thereon at the rate of 6% per annum from date until fully paid, together with a reasonable attorney's fee for its attorney in making collection of said note; that said note had been placed in the hands of its attorney for collection prior to the appointment of the said D. M. Lowry as Receiver, and that it has obligated itself to pay a reasonable attorney's fee for making such collection; that the sum of $50.00 is a reasonable attorney's fee for such services rendered herein; that there are no offsets or counter-claim of the New Jersey Fidelity & Plate Glass Insurance Company against the claimant, and that this claim is a valid subsisting claim for a just and due debt under the obligation of said surety as herein set forth; that claimant is a Florida creditor

of said company and as such is entitled to share in any distribution of the assets of said company pledged to secure Florida creditors.

157 Wherefore, the premises considered, The Barnett National Bank of Jacksonville filed this its claim with the said D. M. Lowry as Receiver of New Jersey Fidelity & Plate Glass Insurance Company, said claim being filed as that of a Florida creditor, said claim having arisen out of business transacted in the State of Florida by said surety company; and said claimant is specifically claiming the right to participate in such assets as may be pledged with the Insurance Department of the State of Florida, pro rata with other claimants having just claims against said assets so deposited and pledged for the protection of the Florida creditors, however, without prejudice to the rights of said claimant to make claim or file suit for any deficiency on any unpaid portion of said claim should a deficiency exist, also without prejudice to its right to share in and participate in the distribution of any dividend to the common creditors of said surety made by any receiver of the Insurance Department of the State of New Jersey, proof of this claim having heretofore been filed with the Insurance Commissioner of the State of New Jersey and of the State of Florida, and is now being filed with said the Honorable D. M. Lowry pursuant to and under the provisions of Chapters 16247 and 16248, Acts of Florida, 1933.

THE BARNETT NATIONAL BANK OF JACKSONVILLE,
By FRANK A. NORRIS, *Its Vice President.* [SEAL]
Attest:
ALFRED B. DAVIS,
Assistant Cashier.

158 [*Duly* sworn to by Frank W. Norris et al., jurat omitted in printing.]

159 MIAMI, FLORIDA, *February 4th, 1932.*

No. 4, $500.00.

On or before Three (3) Months after date, for value received, we promise to pay to the order of The Widening Company, Five Hundred and No/100 Dollars, Payable at First National Bank, of Miami, Florida, with interest *interest* thereon at the rate of 8 percent per annum from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of nonpayment and protest and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent per annum, payable semiannually.

(L. & D. Dept.) (Corporation seal.)
EMPIRE REALTY SECURITIES CORPORATION, [SEAL]
By F. H. RAND, JR., *President.* [SEAL]

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company. 193—. Due.

6245.

Mr. Foster's Store, Miami, Fla.

Endorsement:

THE WIDENING COMPANY,
By F. H. RAND, JR., *President.*

STATE OF FLORIDA,
County of Orange:

I hereby certify the above and foregoing to a true and correct copy of the original instrument which has been checked and verified by me this 16th day of April, A. D. 1934.

[SEAL] (Signed) BERTHA B. LUKE,
Notary Public.

Notary Public, State of Florida at Large.
My commission expires July 5, 1937.

160 Know All Men By These Presents: That Empire Realty Securities Corporation, a corporation, etc., as Principal, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc., as Surety, are held and firmly bound unto The Widening Company, a corporation, etc., hereinafter called the Obligee, its successors and/or assigns, in the penal sum of Five Hundred ($500.00) Dollars, for the payment of which sum well and truly to be made, the Principal and Surety do hereby bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and Sealed this 4th day of February, 1932.

The Condition of this obligation is such that:

Whereas, Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of Five Hundred (500.00) Dollars, payable on or before three months after date to the order of The Widening Company, which promissory note is in words and figures as follows, to wit:

MIAMI, FLORIDA, *February 4th, 1932.*

No. 4, $500.00.

On or before three months after date, for value received, we promise to pay to the order of The Widening Company, Five Hundred and No/100 Dollars, payable at First National Bank of Miami, Florida, with interest thereon at the rate of 8% per annum, from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agrees to waive demand, notice of nonpayment, and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent. per annum payable semiannually.

EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, JR., *President.*

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

And, whereas, the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as to Principal and Interest, upon demand of the Obligee, or the assignee of the Obligee, in the event the said note be not fully paid by the Empire Realty Securities Corporation at its maturity.

Now, if the above-described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void; else same shall remain in full force and effect.

A Condition of this bond is that no assignment or endorsement of the above-described note shall in any way relieve the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass to the assignee, payee, endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

161 Witness the hand and seal of the Principal and Surety this day and year first above written.

[CORPORATION SEAL] EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, Jr., *President*,
As Principal.

Signed, Sealed, and Delivered in the Presence of—
GLADYS DEAVO.

NEW JERSEY FIDELITY & PLATE
GLASS INSURANCE COMPANY,

JEMIL PATTEN.

[CORPORATION SEAL] By E. L. SEMPLE, *Attorney in Fact*,
As Surety.

STATE OF FLORIDA,
County of Orange:

I hereby certify the above and foregoing to be a true and correct copy of the original instrument which has been checked and verified by me this 16th day of April, A. D. 1934.

[SEAL] (Signed) BERTHA B. LUKE,
Notary Public.

Notary Public, State of Florida at Large.
My Commission Expires July 5, 1937.

162 In Circuit Court of Leon County

Claim of E. W. Yandre

Filed May 8, 1934

STATE OF FLORIDA,
County of Orange:

Now comes E. W. Yandre, a citizen and resident of Orange County, Florida, and files this his claim against the assets of the New Jersey Fidelity & Plate Glass Insurance Company, now in the hands of the Honorable D. M. Lowry, Receiver of said company, duly qualified and acting as such under the laws of the State of Florida in the sum of $500.00, the principal amount due under those two certain bonds each dated the 17th day of May, A. D., 1932, in favor of Wellborn C. Phillips as obligee, and signed by the Empire Realty Securities Corporation as principal, and New Jersey Fidelity & Plate Glass Insurance Company, as surety, each of said bonds being in the sum of $250.00; that copies of said bonds and the notes, payment of which is guaranteed by said bonds, are hereto attached and made a part of this claim, and incorporated herein fully and to the same extent as if a part hereof; that the notes, payment of which were guaranteed by said bonds, were duly assigned and endorsed over to the said E. W. Yandre by endorsement appearing on the reverse side thereof as follows, to-wit: "Wellborn C. Phillips"; that the said E. W. Yandre is now the owner and holder of said notes and entitled to the benefits of said bonds as assigned of said notes and files this his claim as such assignee; that the maker of said notes and principal on said bonds, Empire Realty Securities Corporation, has defaulted in payment of said notes, and has paid no sums whatsoever either on principal or interest, and that there

163 is now due the said E. W. Yandre the principal sum of $250.00 on each of said notes, together with interest thereon at the rate of 8% per annum from date until full paid, together with a reasonable attorney's fee for his attorney making collection of said notes; that said notes have been placed in the hands of his attorney for collection, and that he has obligated himself to pay a reasonable attorney's fee for making such collection; that the sum of $50.00 is a reasonable attorney's fee for such services rendered herein; that there are no off-sets or counterclaims of the New Jersey Fidelity & Plate Glass Insurance Company against the claimant, and that this claim is a valid subsisting claim for a just and due debt under the obligation of said surety as herein set forth; that claimant is a Florida Creditor of said company and as such is entitled to share in any distribution of the assets of said company pledged to secure Florida Creditors.

Wherefore, The Premises Considered: The said E. W. Yandre files this his claim with said D. M. Lowry, as Receiver of the New Jersey Fidelity and Plate Glass Insurance Company, said claim being filed as that of a Florida Creditor said claim having arisen out of a business transaction in the State of Florida by said Surety Company; said claimant is specifically claiming the right to participate in such assets as may be pledged with the insurance department of the State of Florida pro rata with other claimants having just claim against said assets so deposited and pledged for the protection of the Florida Creditors, however, without prejudice to the rights of said claimant to make claim or file suit for any deficiency on any unpaid portion of said claim should a deficiency exist, also without prejudice to his rights to share in and participate in the distribution of any dividend to the common creditors of said Surety made by any Receiver or the Insurance Department of the State of New Jersey, proof of this claim having heretofore been filed with the Insurance Commissioner of the State of New Jersey and of the State of Florida and is now being filed with the said Lowry pursuant to and under the provisions of subsequently enacted laws of the State of Florida.

164 E. W. Yandre.

E. W. YANDRE.

[*Duly sworn to by E. W. Yandre; jurat omitted in priting.*]

Know all men by these presents: That Empire Realty Securities Corporation, a corporation, etc., as Principal and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc., as Surety are held and firmly bound unto Wellborn C. Phillips, hereinafter called the Obligee, his heirs, executors, administrators and/or assigns, in the penal sum of two hundred and fifty ($250.00) dollars, for the payment of which sum well and truly to be made, the Principal and Surety do hereby bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 17th day of May 1932.

The condition of this obligation is such that: Whereas Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of two hundred and fifty ($250.00) dollars, payable on or before six months after date to the order of Wellborn C. Phillips, which promissory note is in words and figures as follows, to wit:

165 "No. 4; $250.00; Miami, Florida, May 17th, 1932.

"On or before Six (6) months after date, for value received, we promise to pay to the order of Wellborn C. Phillips, two hundred fifty and no/100 dollars payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6% per annum, from date until fully paid. Interests payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of nonpayment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's

fees for making such collection. Deferred interest payments to bear interest from maturity at 6% per cent, per annum payable semi-annually.

"Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

"EMPIRE REALTY SECURITIES CORPORATION,
"By F. H. RAND, Jr., *President.*"

And, whereas, the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as to principal and interest, upon demand of the Obligee, or the assignee of the Obligee, in the event the said note be not fully paid by the Empire Realty Securities Corporation at its maturity.

Now, if the above-described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void; else same shall remain in full force and effect.

A condition of this bond is that no assignment of endorsement of the above-described note shall in any way relieve the Surety from its obligation to pay said note in accordance with the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass to the Assignee, payee, endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

Witness the hand and seal of the Principal and Surety this day and year first above written.

[CORPORATION SEAL] EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND Jr., *President.*
As Principal.

Signed, sealed, and delivered in the presence of—
GLADYS LEAVO.
J. A. HARKIN.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
[CORPORATION SEAL] By E. L. SEMPLE, *Attorney in Fact.*
As Surety.

STATE OF FLORIDA,
County of Orange.

I hereby certify the above and foregoing to be a true and correct copy of the original instrument which has been checked
166 and verified by me this 16th day of April, A. D. 1934.
[SEAL] BERTHA B. LUKE, *Notary Public.*
Notary Public, State of Florida at Large.
My Commission Expires July 5, 1937.

No. 4; $250.00; Miami, Florida, May 17th, 1932.

On or before Six (6) Months after date, for value received, we promise to pay to the order of Wellborn C. Phillips, Two hundred

and Fifty and no/100 Dollars. Payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6 percent per annum from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of nonpayment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 6 percent per annum, payable semiannually.

[CORPORATE SEAL]

[SEAL] EMPIRE REALTY SECURITIES CORPORATION,

[SEAL] By F. H. RAND, JR., *President.*

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

Due ——— 19—.

Endorsement:

WELLBORN C. PHILLIPS.

STATE OF FLORIDA,

County of Orange:

I hereby certify the above and foregoing to be a true and correct copy of the original instrument which has been checked and verified by me this 16th day of April, A. D., 1934.

[SEAL] BERTHA B. LUKE, *Notary Public.*

Notary Public State of Florida at Large.

My Commission Expires July 5, 1937.

167 No. 2; $250.00; Miami, Florida, May 17th, 1932.

On or before Six (6) Months after date, for value received, We promise to pay to the order of Wellborn C. Phillips Two Hundred and Fifty No./100 Dollars, Payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6 percent, per annum from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of nonpayment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 6 percent per annum, payable semiannually.

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

Due ——— 19—. [CORPORATION SEAL]

[SEAL] EMPIRE REALTY SECURITIES CORPORATION,

[SEAL] By F. H. RAND, JR., *President.*

Endorsement:

WELLBORN C. PHILLIPS.

STATE OF FLORIDA,
County of Orange:

I hereby certify the above and foregoing to be a true and correct copy of the original instrument which has been checked and verified by me this 16th day of April, A. D. 1934.

[SEAL] BERTHA B. LUKE,
Notary Public.

Notary Public, State of Florida at Large.
My Commission Expires July 5, 1937.

Know all men by these presents: That Empire Realty Securities Corporation, a corporation, etc., as Principal and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc., as Surety are held and firmly bound unto Wellborn C. Phillips, hereinafter called the Obligee, his heirs, executors, administrators and/or assigns, in the penal su mof two hundred and fifty (250.00)
168 dollars, for the payment of which sum well and truly to be made the Principal and Surety do hereby bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 17th day of May 1932.

The condition of this obligation is such that: Whereas Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of two hundred and fifty ($250.00) dollars, payable on or before six months after date to the order of Wellborn C. Phillips, which promissory note is in words and figures as follows, to wit:

"No. 2; $250.00; Miami, Florida, May 17th, 1932.

"On or before Six (6) Months after date, for value received, we promise to pay to the order of Wellborn C. Phillips, two hundred fifty and no/100 dollars, payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6% per annum, from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of nonpayment and protest and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 6 percent, per annum payable semiannually.

"Payment guaranteed by Bond of New Jersey Fidelity & Plate Glass Insurance Company.

"EMPIRE REALTY SECURITIES CORPORATION,
"By F. H. RAND, JR., *President.*"

And, whereas, the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as to principal and interest, upon demand of the Obligee, or the assignee of the Obligee, in the event ties Corporation at its maturity.

Now, if the above described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void; else same shall remain in full force and effect.

A condition of this bond is that no assignment or endorsement of the above described note shall in any way relieve the Surety from its obligation to pay said note in accordance with the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass to the Assignee, payee, endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

Witness the hand and seal of the Principal and Surety this day and year first above written.

[CORPORATION SEAL] EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, JR., *President*,
As principal.

Signed, sealed, and delivered in the presence of—
GLADYS DEAVO.
J. A. HARKIN.

[CORPORATION SEAL] NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
By E. L. SEMPLE, *Attorney in Fact*,
As Surety.

STATE OF FLORIDA,
County of Orange:

I hereby certify the above and foregoing to be a true and correct copy of the original instrument which has been checked and verified by me this 16th day of April, A. D. 1934.

[SEAL] BERTHA B. LUKE,
Notary Public.

Notary Public State of Florida at Large.
My Commission Expires July 5, 1937.

170 In Circuit Court of Leon County

Claim of the First State Bank, Eustis, Florida

Filed May 8, 1934

STATE OF FLORIDA,
County of Lake:

Now comes the First State Bank, of Eustis, Florida, having its principal office and place of business at Eustis, Lake County, Florida, and files this its claim against the assets of the New Jersey Fidelity & Plate Glass Insurance Company, now in the hands of the Honor-

able D. M. Lowry, Receiver of said company, duly qualified and acting as such under the laws of Florida, in the sum of $1,500.00, the principal amount due under that certain bond dated the 1st day of January, A. D. 1932, in favor of The Widening Company, a corporation, as obligee, and signed by the Empire Realty Securities Corporation, as principal, and New Jersey Fidelity & Plate Glass Insurance Company, as surety, said bond being in the sum of $1,500.00; that copies of said bond and the note, payment of which is guaranteed by said bond, are hereto attached and made a part of this claim, and incorporated herein fully and to the same extent as if a part hereof; that the note, payment of which was guaranteed by said bond, was duly assigned and endorsed over to the said The First State Bank, of Eustis, Florida, by endorsement appearing on the reverse side thereof as follows; to wit: "The Widening Company by F. H. Rand, Jr. Prest."; that the said The First State Bank, of Eustis, Florida, is now the owner and holder of said note and entitled to the benefits of said bond as assignee of said note and files this its claim as such assignee; that the maker of said note and principal on said bond, Empire Realty Securities Corporation, has defaulted in payment of said note, and has paid no sums
171 whatsoever either on principal or interest, and that there is now due the said The First State Bank, of Eustis, Florida, the principal sum of $1,500.00 on said note, together with interest thereon at the rate of 8% per annum from date until fully paid, together with a reasonable attorney's fee for its attorney in making collection of said note; that said note had been placed in the hands of its attorney for collection prior to the appointment of the said Lowry as Receiver, and that it has obligated itself to pay a reasonable attorney's fee for making such collection; that the sum of $150.00 is a reasonable attorney's fee for such services rendered herein; that there are no offsets or counter claims of the New Jersey Fidelity & Plate Glass Insurance Company against the claimant, and that this claim is a valid subsisting claim for a just and due debt under the obligation of said surety as herein set forth; that claimant is a Florida creditor of said company, and as such entitled to share in any distribution of the assets of said company pledged to secured Florida creditors.

Wherefore, the premises considered, The First State Bank, of Eustis, Florida, figles this its claim with said D. M. Lowry as Receiver of the New Jersey Fidelity & Plate Glass Insurance Company, said claim being filed as that of a Florida creditor, said claim having arisen out of business transacted in the State of Florida by said surety company; said claimant is specifically claiming the right to participate in such assets as may be pledged with the Insurance Department of the State of Florida, pro rata with other claimants having just claims against said assets so deposited and pledged for the protection of the Florida creditors, however, without
172 prejudice to the rights of said claimant to make claim or file

suit for any deficiency on any unpaid portion of said claim should a deficiency exist, also without prejudice to its right to share in and participate in distribution of any dividend to the common creditors of said surety made by any receiver or the Insurace Department of the State of New Jersey, proof of this claim having heretofore been filed with the Insurance Commissioner of the State of New Jersey and of the State of Florida, and is now being filed with said Lowry pursuant to and under the provisions of subsequently enacted laws of the State of Florida.

FIRST STATE BANK, OF EUSTIS, FLORIDA.
By CHAS. ISTED, *Its President.*

Attested By:
[CORPORATE SEAL] H. F. ISTED, *Its Cashier.*

173 [*Duly sworn to by Chas. Isted et al.; jurat omitted in printing.*]

174 Know All Men by These Presents: That Empire Realty Securities Corporation, a corporation, etc. as Principal, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc., as Surety, are held and firmly bound unto The Widening Company, a corporation, etc., hereinafter called the Obligee, its successors and/or assigns, in the penal sum of fifteen hundred ($1,500.00) dollars, for the payment of which sum well and truly to be made, the Principal and Surety do hereby bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 1st day of January, A. D. 1932.

The condition of this obligation is such that; whereas, Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of fifteen hundred ($1,500.00) dollars, payable on April 1st, 1932, to the order of The Widening Company, which promissiory note is in words and figures as follows, to wit:

"No. 1; $1,500.00; Miami, Florida, January 1, 1932.

"On April 1st, 1932, after date, for value received, we promise to pay to the order of The Widening Company, fifteen hundred and no/100 dollars, payable at First National Bank of Miami, Florida, with interest thereon at the rate of 8% per annum, from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agrees to waive demand, notice of nonpayment and protest and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 percent per annum payable semiannually.

EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, JR., *President.*

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

And, whereas, the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as to principal and interest, upon demand of the Obligee, or the assignee of the Obligee, in the event the said note be not fully paid by the Empire Realty Securities Corporation at its maturity.

Now, if the above described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to Principal and interest, upon demand of the holder hereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void; else same shall remain in full force and effect.

A condition of this bond is that no assignment or endorsement of the above described note shall in any way relieve the Surety from its obligation to pay said note in accordance with the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass to the assignee, payee, endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

Witness, the hand and seal of the Principal and Surety this day and year first above written.

[CORPORATION SEAL] EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, JR., *President*,
As principal.

[CORPORATION SEAL] NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
By E. L. SEMPLE, *Attorney in fact*,
As Surety.

Signed, sealed, and delivered in the presence of—
J. PATTEN.
GLADYS DEAVO.

STATE OF FLORIDA,
County of Orange:

I hereby certify the above and foregoing to be a true and correct copy of the original instrument which has been checked and verified by me this 16th day of April, A. D. 1934.

175 [SEAL] (Signed) BERTHA B. LUKE,
Notary Public.

Notary Public, State of Florida at Large.
My Commission Expires July 5, 1937.

No. 1; $1,500.00; Miami, Florida. January 1st, 1932.

On April 1st, 1932 ——— after date, for value received, We promise to pay to the order of The Widening Company, fifteen hundred and no/100 dollars, Payable at First National Bank of Miami, Florida, with interest thereon at the rate of 8 percent, per annum from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of non-

payment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at ——— percent per annum, payable semiannually.

[SEAL] EMPIRE REALTY SECURITIES CORPORATION.
[SEAL] By F. H. RAND, *President.*
(Corporation.)

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company. 193—.

Endorsement:

THE WIDENING COMPANY,
By F. H. RAND, JR., *President.*

STATE OF FLORIDA
County of Orange:

I hereby certify the above and foregoing to be a true and correct copy of the original instrument which has been checked and verified by me this 16th day of April, A. D. 1934.

[SEAL] (Signed) BERTHA B. LUKE,
Notary Public.

Notary Public, State of Florida at Large.
My Commission Expires July 5, 1937.

176 In Circuit Court of Leon County

Proof of Claim

Filed May 10, 1934

Hon. D. M. Lowry, Florida Receiver for New Jersey Fidelity & Plate Glass Insurance Company

Comes now Pearce Produce Co., Inc., a Florida corporation, as claimant, and respectfully shows unto the Hon. D. M. Lowry, as Receiver for New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation authorized to transact a surety business under the laws of the State of Florida, that your said claimant is a corporation doing business under the laws of the State of Florida, with its principal place of business at Miami, Florida, and that it has a provable claim against the said New Jersey Fidelity & Plate Glass Insurance Company arising out of a transaction in Florida and governed by the laws of the State of Florida, and as a protection for which your claimant is entitled to a distributable portion of the proceeds of the assets of the said insurance company in the State of Florida now under the control and in the possession of the Receiver; that the said claim arose from the following transaction, to wit:

The said Pearce Produce Co., Inc., was the defendant in that certain cause in the Civil Court of Record in and for Dade County,

Florida, being Clerk's File No. 10558, styled and entitled "Herbert Lee, Plaintiff, vs. Pearce Produce Co., Inc., a corporation, Defendant", wherein in said court and cause there was rendered a final judgment in favor of the said plaintiff, Herbert Lee, and against the said defendant, Pearce Produce Co., Inc., on March 24th, A. D. 1931, in the sum of $2,367.11 and the costs of the court fixed at $28.20; that thereafter and within the time allowed by law the said Pearce Produce Co., Inc., sued out its writ of error in the Circuit
177 Court of the Eleventh Judicial Circuit of Florida in and for Dade County, Florida, from the said Civil Court of Record in said county to the judgment aforesaid and superseded the said judgment by the filing of a supersedeas bond in the sum of $2,500.00, in which the New Jersey Fidelity & Plate Glass Insurance Company was surety; that under the requirements of the insurance company at the time it executed the said bond as surety the sum of $2,500.00 in cash was deposited with the said company as collateral indemnity to protect the surety in its undertaking, and that said sum of $2,500.00 was actually delivered to and received by the said New Jersey Fidelity & Plate Glass Insurance Company, which said sum of money the said company still holds.

That before the final determination of this cause on appeal the said New Jersey Fidelity & Plate Glass Insurance Company was placed in the hands of a receiver in the State of New Jersey, and that upon said fact becoming known to the interested parties in the said cause a substitute bond was required; that by order of the Circuit Court of Dade County, Florida, acting as the appellate court in said cause, an order was entered requiring and at the same time allowing the substitution of a new bond with the release of the old bond to which the New Jersey Fidelity & Plate Glass Insurance Company had affixed its signature as surety; that thereafter the said judgment was paid and discharged by the Pearce Produce Co., Inc., the claimant herein, out of funds other than those funds which had been deposited with the insurance company, and the claimant files and attaches hereto and makes a part hereof a certified copy of the said satisfaction of judgment.

That thereafter and just prior to December 29th, 1932, your claimant filed a proof of claim with the State of New Jersey, Department of Banking and Insurance, covering the $2,500.00
178 item of cash that had been placed as security or indemnity under said bond, which said proof was filed as claim No. S–68 on the 29th day of December 1932, with William H. Kelly, Commissioner of Banking and Insurance, State of New Jersey, as will show by a true copy of a letter acknowledging receipt of the said proof attached hereto and made a part of this claim and will further show by a true copy of the official receipt of the said commissioner attached hereto and made part of this claim.

Claimant further shows that an attempt was made by the said Commissioner of the State of New Jersey to trace the said $2,500.00 in cash or the proceeds thereof into the investment made by the

company from said funds, but that said effort has been unsuccessful although there has been no dispute or question raised with reference to the actual receipt of the said cash sum of $2,500.00 by the said insurance company, all as will more fully appear by reference to a true copy of letter dated April 25th, 1934, from the Department of Banking and Insurance, Bureau of Insurance, State of New Jersey, attached thereto, and made a part of this claim.

Claimant further shows that there are no setoffs or claims of whatsoever kind or nature against the claim of this claimant, and that it is entitled to the sum of $2,500.00, plus interest from the date of December 29th, 1932; that your claimant as a Florida creditor is entitled to its equal pro rata share of the assets on hand with the Florida receiver of the said insurance company in accordance with Senate Bill No. 288 and Senate Bill No. 739 of the Acts of the Legislature of the State of Florida, 1933.

Dated this 7th day of May, A. D. 1934, at Miami, Florida.

Bart A. Riley and Stapp, Gourley, Vining & Ward, Both Seybold Building, Miami, Fla., Attorneys for Claimant.

PEARCE PRODUCE CO., INC.

[SEAL] By A. F. PEARCE, *President.*

Attest:

E. D. PEARCE, *Secretary.*

179 [*Duly sworn to by A. T. Pearce et al.; jurat omitted in printing.*]

180 In the Civil Court of Record, in and for Dade County, Florida

No. 10558

HERBERT LEE, PLAINTIFF

v.

PEARCE PRODUCE CO., INC., A CORPORATION, DEFENDANT

SATISFACTION OF JUDGMENT

Know all men by these presents, that Herbert Lee, the plaintiff in a certain cause wherein the said Herbert Lee is plaintiff, *v.* Pearce Produce Co., Inc., a corporation, is defendant, does hereby acknowledge full payment and satisfaction of that certain judgment rendered and issued out of the Civil Court of Record, in and for Dade County, State of Florida, in the above styled and entitled cause on the 24th day of March, A. D. 1931, for two thousand three hundred sixty-seven and 11/100 ($2,367.11) Dollars and costs of court fixed at Twenty-eight and 20/100 ($28.20) Dollars; and the Clerk of the Civil Court of Record, in and for Dade County, State of Florida, and the Clerk of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, are hereby authorized and directed to satisfy and cancel the said judgment on their records in their respective offices.

In witness whereof, I have hereunto set my hand and seal this 8th day of July A. D. 1933.

[SEAL] HERBERT LEE.

J. B. WILLIAMS.

M. D. CHRISTOPHER.

181 STATE OF GEORGIA,

County of Brooks:

Personally appeared before me Herbert Lee, to me well known, and who being by me duly sworn, deposes and says, under oath, that he acknowledged before me that he executed the above and foregoing satisfaction of judgment for the purposes therein stated.

Sworn to and subscribed before me this the 8th day of July A. D. 1933.

[NOTARY PUBLIC SEAL] J. B. BAUM.

Notary Public, State of Georgia at Large.

Notary public, State at large, Quitman, Ga.

My Commission Expires Feb. 17, 1937.

STATE OF FLORIDA,

County of Dade, ss:

I hereby certify that the above and foregoing is a true and correct copy of a Satisfaction of Judgment filed in my office the 11th day of July, A. D. 1933, at 4:28 P. M. and recorded in Assgn. & Sat. Judg. Book 10, at Page 343.

Witness my hand and official seal this 7th day of May, A. D. 1934.

E. B. LEATHERMAN,

Clerk Circuit Court.

[SEAL] By O. D. BAYON,

Deputy Clerk.

182 STATE OF NEW JERSEY,

DEPARTMENT OF BANKING & INSURANCE,

SIR:—MADAM:

Re In the matter of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company.

Receipt is hereby acknowledged of Proof of Claim Number S-68 for $2,500.00.

A clerical inspection shows that the proof presented is sufficient to entitle the claim to an examination on the merits. On such an examination it may develop that further evidence is required. If so you will be notified.

Very truly yours,

WM. H. KELLY,

Commissioner of Banking & Insurance.

By Edw. Siedler.

EDW. SIEDLER.

PEARCE PRODUCE COMPANY, INC.

When requesting any information regarding your claim always mention proof of claim number.

183 W. H. Kelly, Commissioner of Banking & Insurance of New Jersey.
T. A. McNicholas, C. H. Baker, Special Assistant Deputy Commissioners.

New Jersey Fidelity & Plate Glass Insurance Company, Newark, New Jersey

In Liquidation

DECEMBER 29TH, 1932.

BART. A. RILEY, ESQ.,
Suites 1025–1038, Seybold Building, Miami, Florida.

Re Pearce Produce Co., Inc., Proof of Claim #S–68.

DEAR SIR: In reply to your letter of December 19th, in connection with the above we wish to advise that your proof of claim has been filed and is now awaiting final examination by the Liquidator.

Yours very truly,

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY IN LIQUIDATION.
By Edw. Siedler.
EDW. SIEDLER.

ES–MW.

184 W. H. Kelly, Commissioner of Banking and Insurance of New Jersey.
T. A. McNicholas, C. H. Baker, Special Assistant Deputy Commissioners.

State of New Jersey
Department of Banking and Insurance,
Bureau of Insurance

LIQUIDATION DIVISION,
31 Clinton Street, Newark, N. J.,
April 25th, 1934.

BART A. RILEY, ESQ.,
Seybold Building, Miami, Florida.

Re Proof of Claim #S–68, Pearce Produce Co., Inc.

DEAR SIR: We are in receipt of your letter of April 17th with reference to the above.

In connection with our letter of October 5th wish to advise that it is impossible for the Liquidator to trace the specific investment out of the collateral and therefore will be unable to turn over to your client $2,500.00 of the Municipal Bonds invested in that account. Likewise, claims filed against the collateral are in excess of the amount available and our Counsel states that were it possible to trace the investment in Municipal Bonds, it would be a discrimination

against the other creditors if we were to release to you $2,500.00 of these bonds.

The market at present is unfavorable on New Jersey Municipal Bonds and the Liquidator deems it advisable to withhold the sale of these securities pending an improvement, which, of course, will inure to the benefit of all the claimants to that fund.

We regret that we cannot give you any more encouraging information at this time.

Yours very truly,

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY IN LIQUIDATION.
By Edw. Siedler.
EDW. SIEDLER.

ES–MW.

185 In Circuit Court of Leon County

Claim of Joseph M. Schlesinger

Filed May 14, 1934

Personally appeared before me, an officer duly authorized to administer oaths, R. I. Berenson, to me well known, who, being first duly sworn, deposes and says:

That he was the General Agent of the New Jersey Fidelity and Plate Glass Insurance Company, which is now in liquidation, during the time that the following indebtedness was incurred by the said company, and that such indebtedness was incurred on behalf of the said company in favor of Joby Schlesinger.

That the said New Jersey Fidelity and Plate Glass Insurance Company, which is now in liquidation, is indebted to the said Joby Schlesinger in the sum of Two Hundred Dollars and seventy-one cents ($200.71), and that such indebtedness was incurred as follows:

Clerk of Federal Court	$11.60
Pete Baker & Fred Weiss	25.00
Frank Murray	15.00
W. M. Coleman	25.00
Pete Baker	84.13
J. F. Lyons	106.45
Frank Murray	104.32
Jessie Bell	88.52
	$460.02
Less credit of	172.65
	$287.37
Frank J. Weiss	100.76
3 months' telephone bill	6.45
Criminal Court Clerk	5.00
	112.21
	287.37
	399.58

Less credit of	210.77
Balance due	$188.81
Surrendering L. Davis to Sheriff	10.00
Additional phone calls	1.90
Total Balance due	$200.71

RICHARD I. BERENSON.

Sworn to and subscribed before me this 11th day of July, A. D. 1934.

[SEAL] EVELYN GASCH,
Notary Public, St. of Fla. at Large.

My Commission expires June 23, 1937.

186 APPEARANCE BONDS

SOUTHERN BAIL BOND CO.,
511 Forsyth Street, Jacksonville, Florida.
March 27, 1933.

Mr. J. K. RICKETTS,
Special Representative New Jersey Fidelity and Plate Glass Insurance Company, in Liquidation, 250 N. E. 44th Street, Miami, Florida

DEAR SIR: At the request of Mr. Berenson, representative of your company, I have dispersed of funds to the amount of $188.81 on the following cases:

Clerk of Federal Court	811.60
Pete Baker and Fred Weiss	25.00
Frank Murray	15.00
W. M. Coleman	25.00
Pete Baker	84.13
J. F. Lyons	104.45
Frank Murray	104.32
Jessie Bell	88.52
Credit	172.65
Balance due	287.37
Fred J. Weiss	103.76
Three Months' telephone bill	6.45
Criminal Court Clerk	5.00
	112.21
	287.37
	399.58
Credit	210.77
Total balance due	188.81

Also, after Mr. Berenson had acknowledged the above debt of $188.81 two other debts were incurred, $10.00 for surrendering L. Davis to Sheriff's Office and $1.90 for phone calls, thus making the

total $200.71. We would appreciate a check for this amount as soon as possible.

I am enclosing copies of some of the letters of communication between Mr. Berenson and myself.

Very truly yours,

J. M. Schlesinger.
J. M. SCHLESINGER.

S/g.

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me an officer duly authorized to administer oaths, Joseph M. Schlesinger, who being first duly sworn, deposes and says that the New Jersey Fidelity and Plate Glass Insurance Company, which is now in liquidation is indebted to him
187 in the sum of Two Hundred dollars and seventy-one cents, ($200.71) which sum has not been paid nor any part thereof. That such indebtedness was incurred as follows:

Clerk of Federal Court	$11.60
Pete Baker & Fred Weiss	25.00
Frank Murray	15.00
W. M. Coleman	25.00
Pete Baker	84.13
J. F. Lyons	106.45
Frank Murray	104.32
Jessie Bell	88.52
	460.02
Credit	172.65
Balance due	287.37
Fred J. Weiss	100.78
Three months' telephone bill	6.45
Criminal Court Clerk	5.00
	112.21
	287.37
	399.58
Credit	210.77
Balance due	188.81
Surrendering L. Davis to Sheriff	10.00
Additional phone calls	1.90
	200.71

That the letters attached hereto are copies of originals in the possession of said Joby Schlesinger.

JOSEPH M. SCHLESINGER.

Sworn to and subscribed before me this 5 day of May, A. D. 1934.

[SEAL] D. B. PAXTON.
Notary Public State of Florida at Large.

My Commission Expires Apr. 14, 1936.

[Copy]

JUNE 24, 1932.

MR. R. J. BERENSON,
750 Seybold Building, Miami, Florida.

DEAR SIR: Added to the amount which you already owe us, $188.81, is $10.00 which we paid out on L. Davis in surrendering him to the Sheriff's Office and $1.90 for a phone call on May 21, 1932. This makes a total of $200.71. Will you please send us a remittance for this amount immediately?

This debt which you owe us has remained unpaid long enough. We need the money badly.

Very truly yours,

SOUTHERN BAIL BOND COMPANY,
By ——— ———.

188 [Copy]

JUNE 6TH, 1932.

MR. JOSEPH SCHLESINGER,
Southern Bail Bond Company, 511 W. Forsyth St.,
Jacksonville, Fla.

DEAR JOBY: Received your letter. Please be a little patient, as we are trying to collect some money and it will be a matter of a few days, at which time as will send you check to cover.

Have not written any bonds in so long we do not know that there is a bonding business.

Yours,

DICK.

[Copy]

JUNE 4, 1932.

MR. R. J. BERENSON,
750 Seybold Building, Miami, Florida.

DEAR DICK: Mr. Hollender was in our office and complained to us about the $188.81 that we owed him. We have now settled up with him, for this amount in full, so please send us a check for the $188.81 plus $10.00 for bringing L. Davis in. We need this money immediately.

If you want us to look after your cases in Federal Court and see that your men get here for court, please send us some money for Mr. Maynard so that he can put his time to your cases.

Very truly yours,

SOUTHERN BAIL BOND COMPANY.
By ——— ———.

[Copy]

MAY 12, 1932.

MR. JOSEPH SCHLESINGER,
W. Forsyth St., Jacksonville, Florida.

DEAR JOBY: With reference to that money I owe you, if you will please be patient for a few days I will be able to send you check as I am short as hell right now.

Very truly yours,

DICK.

189

[Copy]

MAY 7, 1932.

SOUTHERN BAIL BOND CO.,
West Forsythe St., Jacksonville, Florida.
Attention Mr. Schlesinger.

DEAR JOBY: Concerning your letter of April 25th, with reference to Mendez bond—this case will not come until about the 15th of May.

Now, with reference to Shorty Mimms, I have the Department of Justice here working on it.

They found Gaylord and his brother, but Shorty was not with them.

With reference to check for $188.81, Miss Patten is out sick, but upon her return will send you check less $25.00 that I gave you.

Yours truly,

DICK.

[Copy]

APRIL 14, 1932.

MR. R. J. BERENSON,
750 Seybold Building, Miami, Florida.

DEAR SIR: A statement for recent expenses is as follows:

$11.60—paid to Clerk of Federal Court.
25.00—cost of trying to locate Peter Baker and Weiss.
15.00—cost of trying to locate Frank Murry.

Very truly yours,

SOUTHERN BAIL BOND COMPANY.
By ——— ———.

[Copy]

FEBRUARY 24, 1932.

BONDING COMPANY, INC.,
750 Seybold Building, Miami, Florida.
Attention Mr. Richard Berenson.

DEAR SIR: This is to inform you that the Sheriff's office has notified us that the bonds of J. F. Lyons, $106.45, and Frank Murray, $104.32, are now past due.

190

SOUTHERN BOND COMPANY,
By ——— ———.

191 In Circuit Court of Leon County

[Title omitted.]

Proof of claim

Filed May 16, 1934.

STATE OF FLORIDA,
Dade County, ss:

At Miami, Dade County, Florida, on this 14th day of May, A. D. 1934, came B. H. London and makes oath and says:

That he is the duly qualified and acting president of The London Operating Company, a corporation duly organized and existing under and by virtue of the laws of the State of Florida; that he is duly authorized to make this proof of claim for and on behalf of the said, The London Operating Company.

1. That heretofore, to wit, on the 25th day of March, A. D. 1931, Harry Masser and Morris Baron as complainants, filed in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Clerk's File No. 32055, their bill of complaint naming The London Operating Company, a Florida corporation, as defendant, in which bill of complaint the said Harry Masser and Morris Baron prayed for the specific performance by the said, The London Operating Company, of certain covenants and conditions contained in a lease agreement dated April 15, 1930, entered into by, and between the said, The London Operating Company and the said complainants named in said bill of complaint, Harry Masser and Morris Baron, covering certain premises located in Miami Beach, Florida,
192 and further praying for the issuance of a temporary injunction, enjoining and restraining the said The London Operating Company from institution any ouster proceedings against the said complainants in said cause and from in any manner interfering with the possession of the premises by the said complainants; all of which will more fully appear by reference to said original bill of complaint and a copy of the lease agreement attached thereto filed in said cause, and by a copy thereof hereto attached to this proof of claim and marked "Exhibit 1" and made a part hereof.

2. Thereafter, to wit, on the 26th day of January, A. D. 1932, after proceedings had in said cause in which said bill of complaint was filed and upon final hearing, the Hon. Paul D. Barns, Judge of said Court, entered a final decree by which final decree the said bill of complaint was dismissed and the costs of the proceedings taxed against the said Harry Masser and Morris Baron, the complainants in said cause; as appears from a copy of said final decree attached hereto as "Exhibit 2."

3. Thereafter in said cause the said complainants therein Harry Masser and Morris Baron filed their notice of appeal appealing from the said final decree dismissing said cause, which said appeals was taken to the Supreme Court of the State of Florida as appears

from a copy of said notice of appeal filed by the said Harry Masser and Morris Baron, complainants in said cause, hereto attached as Exhibit 3, the original of said notice of appeal being recorded on the 28th day of January, A. D. 1932, in Chancery Order Book No. 267, page 116, which said copy of notice of appeal is made a part hereof.

4. Thereafter the said Harry Masser and Morris Baron complainants in said cause applied to the said Circuit Court for an order allowing and fixing conditions of supersedeas and for the purpose of having the appeal from said final decree act as a supersedeas and to have the said appeal supersede the force and effect of said decree dismissing said bill of complaint, and thereafter, to wit, on the
29th day of January, A. D. 1932, the Hon. Paul D. Barns,
193 Judge of the Circuit Court, Dade County, Florida, entered his order granting the application of the said Harry Masser and Morris Baron and providing that the said appeal taken by the said Harry Masser and Morris Baron from the final decree dismissing the cause act as a supersedeas and have the effect to suspend the force and effect of the said final decree upon the said Harry Masser and Morris Baron, or either of them giving and filing in the cause pending in the Circuit Court a supersedeas bond in the amount of $2,000.00 and containing the following conditions:

"Now, Therefore, the conditions of this obligation are that the undersigned shall in the event the said order appealed from be affirmed or said appeal be dismissed, pay to the said defendant all costs and damages as may be occasioned by reason of said appeal and supersedeas, also all cost now or as may be hereafter taxed against complainant herein by this court, then this obligation to be null and void, otherwise to remain in full force and effect."

as appears from a copy of said order hereto attached as claimant's Exhibit 4 and made a part hereof.

5. Thereafter in compliance with said order and the laws and Statutes of the State of Florida in such cases made and provided, one of the said complainants in said cause, to wit, Harry Masser, naming himself as principal thereof, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, as surety thereon, filed in said cause a supersedeas bond in the sum of $2,000.00 for the payment whereof they the said Harry Masser and the defendant in this cause, New Jersey Fidelity & Plate Glass Insurance Company, a corporation, bound themselves, jointly and severally, firmly by the said presents, which said supersedeas bond, in accordance with the order of the court above described, contained the following condition:

"Now, Therefore, the conditions of this obligation are that the undersigned shall, in the event the said order appealed from be affirmed or said appeal be dismissed, pay to the said defendant all costs and damages as may be occasioned by reason of said appeal and supersedeas, also all costs nor or as may be hereafter taxed against complainants herein by this court, then this obligation to be null and void, otherwise to remain in full force and effect."

all of which will more fully appear by a photostatic copy of said bond hereto attached as Exhibit 5 and made a part hereof and by the original of said bond recorded on the 3rd day of July 1931
194 in Bond Book 4, page 118.

6. Thereafter upon due proceedings had in the said Supreme Court of the State of Florida upon the appeal taken by the said complainants in said cause, Harry Masser and Morris Baron, the said Supreme Court of the State of Florida did on the 7th day of November, A. D. 1932, enter its decision and forward its mandate affirming the order of the Circuit Court of the Eleventh Judicial Circuit of Dade County, Florida, in dismissing the said bill of complaint (but reversing it in part not pertinent to this claim), the decision and mandate from the said Supreme Court of Florida in said appeal attached hereto as Exhibit 6 and made a part hereof.

7. Deponent would now show that as heretofore set forth in Paragraph 5 hereof, the bond filed, a copy of which is hereto attached as Exhibit 5 contained the condition, among others, to pay all costs that had been taxed by the Circuit Court of Dade County, Florida, in the cause in which said bond was filed at the time of the filing of the said bond; that in the said cause, the said court in and by the decree dismissing the bill of complaint, a copy of which is hereto attached as Exhibit 2 taxed against the complainants in said cause, Harry Masser and Morris Baron, all of the costs of said cause; that up to the time of the entry of said final decree the said The London Operating Company, defendant in said cause, had expended the total sum of $480.00 for costs incidental to the defense of said suit, an itemized list of which costs are hereto attached to this claim as Exhibit 7 and made a part hereof.

8. That the costs of said suit which had been paid by the claimant prior to the entry of said final decree in the amount of $480.00, actual, natural, and direct damages suffered by the claimant, the obligee named in the bond, copy of which is hereto attached as Exhibit 5, and is actual loss suffered by the claimant herein within the condition of the said bond in that said bond was conditioned to pay costs of said cause which had been taxed prior to the filing of said bond, and the said sum of $480.00 as set forth in the schedule hereto attached as Exhibit 7 was the costs which had been paid by the
195 claimant prior to the filing of said bond and which were taxed against the principal on said bond by the final decree dismissing the bill of complaint, copy of which final decree dismissing the bill of complaint is hereto attached as Exhibit 2.

9. Deponent would further show that the bond filed by the said Harry Masser as principal and New Jersey Fidelity & Plate Glass Insurance Company, as surety, copy of which bond is hereto attached as Exhibit 5, contained the further condition to pay all costs and damages as may be occasioned by reason of the taking of the said appeal and supersedeas by the said Harry Masser and Morris Baron. This deponent would further show that in the defense of the appeal

prosecuted by the said Harry Masser and Morris Baron in the Supreme Court of Florida from the final decree dismissing the bill of complaint it was necessary for the claimant herein to employ counsel to represent it in said Supreme Court and for the purpose of arguing said appeal to advance to said counsel traveling expenses from Miami to Tallahassee and return; that the claimant did pay or obligated itself to pay to its attorneys for services rendered in the defense of the appeal taken by the said Harry Masser and Morris Baron from the said decree dismissing bill of complaint, the sum of $450.00 and did also pay to its solicitor for traveling expenses to Tallahassee and return the sum of $100.00.

10. That the total costs of the suit instituted by the said Morris Baron and Harry Masser paid by the claimant, as itemized in Exhibit 7 hereto attached and made a part hereof in the sum of $480.00 and the attorneys fees and traveling expenses paid by the claimant as described in Paragraph 9 in the sum of $550.00, making an aggregate total of $1,030.00 was the actual, natural, direct, and total damages suffered by the claimant, the obligee named in the bond, copy of which is hereto attached as Exhibit 5; and that notwithstanding the occasioning to the claimant The London Operating Company of the said total damages in the sum of $1,030.00 representing the costs paid by the claimant and taxed against the principal on said bond by the Circuit Court of Dade County,
196 Florida, in the final decree copy of which is hereto attached as claimant's Exhibit 2 and representing the damages suffered by the claimant by the taking of the appeal by the said Harry Masser and Morris Baron, neither Harry Masser, the principal named on the said bond, copy of which is hereto attached as Exhibit 5, nor the defendant in this cause, New Jersey Fidelity & Plate Glass Insurance Company, surety named on said bond, or anyone in their behalf has made payment to the claimant of any part or portion of said damages as required so to do under the terms and conditions of the said bond; that payment of said aggregate has been demanded of the said Harry Masser and New Jersey Fidelity & Plate Glass Insurance Company, but neither claimant or anyone in its behalf has received any part or portion of such costs or damages suffered aforesaid.

11. Tht there are no set-offs or counter claims existing in favor of any person or persons whomsoever which would tend to defeat or diminish the claim of this claimant against said New Jersey Fidelity & Plate Glass Insurance Company in the sum of $1,030.00 as herein described.

(Signed) B. H. London.

Subscribed and sworn to before me this 14th day of May, A. D. 1934.

[SEAL] (Signed) Edward Friedman,
Notary Public State of Florida at Large.

My commission expires: Nov. 23, 1937.

197 *Exhibit 1*

In the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, State of Florida

In Chancery, No. 32055–B

HARRY MASSER, SOMETIMES CALLED HARRY MESSER, AND MORRIS BARON, complainants

vs.

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, defendant

AMENDED BILL FOR SPECIFIC PERFORMANCE AND INJUNCTION

To the Honorable Judges of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, in Chancery Sitting:

Now comes the complainants, Harry Masser, sometimes called Messer, and Morris Baron, of Dade County, Florida, and prior to any answer or other pleading being filed by the said defendant, The London Operating Company, brings this their amended bill of complaint against The London Operating Company, a Florida corporation, and state:

I

That the complainants are residents of Miami Beach, Dade County, Florida, and are over the age of twenty-one years; that the defendant, The London Operating Company is a Florida corporation organized and existing under and by virtue of the laws of the State of Florida.

II

That on to wit, the 15th day of April, A. D. 1930, and up to the present time, the defendant, The London Operating Company, were the owners in fee simple of a certain hotel building known and designated as The London Arms, and more particularly described as follows:

That certain hotel known as "THE LONDON ARMS" situated upon Lot 12 of Block 12 of Ocean Beach #1, according to the Public Records of Dade County, Florida, together with all furniture, furnishings, and equipment now located in said hotel, a complete description of which is attached hereto as Exhibit "A" and made

198 a part of this lease; that on said date of April 15th, A. D. 1930, the said complainants Harry Masser, sometimes called Harry Messer and Morris Baron entered into a lease of said property hereinbefore described from the said defendant, The London Operating Company, for a term of 3 years commencing the first day

of November, A. D. 1930, and ending the 31st day of October, A. D. 1933, That under and by virtue of said lease, a copy of which is hereto attached marked Exhibit A and made by reference a part of this bill of complaint, the complainants herein or lessees agreed to pay as a rental for said premises, the sum of $45,000.00 payable in the manner of the following, to wit: THE SUM OF $5,000.00 on the signing of the lease, which sum has been paid, $10,000.00 on the first day of November, A. D. 1930, which sum has been paid, $7,500.00 which sum is to be paid in February 15th, A. D. 1931, $15,000.00 to be paid November 1st, A. D. 1931, and $7,500.00 on the first day of November, A. D. 1932; that heretofore on the dates designated, the complainants or lesse's herein paid to the defendant, The London Operating Company the various sums of money hereinbefore mentioned and stand ready, willing, and able to fully comply with the conditions of said manner of payments now and on the dates that the said payments are to be made, provided the said defendant keeps the mutual covenants by him required to be kept under the terms of the said lease. Your complainants further allege that they have at all times met and fully complied with each and every of the covenants and conditions of the said lease hereto attached and marked Exhibit A, on their part required to be performed but that the defendant, The London Operating Company has failed, neglected, and refused to comply with certain of the conditions and covenants of the said lease, which it was required to perform.

III

Your complainants further state that the said lease contained the following language relative to the performance of certain covenants on the part of the les'ee:

"Upon the performance of the lessees of the agreements and 199 . conditions herein set forth and upon the payments herein required to be made the lessor hereby covenants as follows;

1. That it will paint the woodwork, walls, and ceilings of the sleeping rooms and halls of the premises and will complete the solarium on half of the roof in the following manner on or before November 1, 1930, to wit: to build a slat wooden floor with a six foot partition in the middle and a four foot screen on the outside of pipe and canvass, to be approved by the Bouilding Inspector.

2. To deliver possession of said premises to lessees on November 1, 1930.

3. That said lessees shall and may peaceably and quietly have, hold, and enjoy the demised premises during the term aforesaid.

4. That the lessor shall keep in good state of repair the roof and outside walls of the buildings.

5. That the lessor shall completely furnish 53 rooms, according to an inventory attached hereto as exhibit A and made a part hereof.

6. Provided the 7,500 payment is made on February 15, 1931, said lessor will pay the lessees 6% interest on said $7,500 from the saide date until November 1, 1932.

7. That said lessor shall insure the said premises against fire and hurricane.

IV

Your complainants further allege that the first covenant above enumerated on the part of the defendant or lessor to be performed was the following:

"1. That it will paint the woodwork, walls, and ceilings of the sleeping rooms and halls of the premises and will complete the solarium on half of the roof in the following manner on or before November 1, 1930, to wit: to build a slat wooden floor with a six foot partition in the middle and a four foot screen on the outside of pipe and canvass to be approved by the building inspector."

That notwithstanding the obligation of the lessor, The London Operating Company, to perform the said covenants, the said The London Operating Company failed, neglected, and refused to perform said covenant. Your complainants further state that the lease of The London Arms Hotel was made by the defendant to the complainants for the sole and only purpose of the complainants operating a hotel and unless the said covenant hereinbefore set forth is complied with and performed by the said defendant, the complainants will be unable and are unable to carry on and make use of the said premises as a hotel and therefore state that the
200 failure of the said defendant, The London Operating Company, to perform the above-mentioned covenant is causing the said complainants, Harry Masser and Morris Baron, grave and irreparable injury.

V

Your complainants further allege that the fifth covenant of the said lease on the part of the lessor to be performed is as follows:

"5. That the lessor shall completely furnish fifty-three rooms according to an inventory attached hereto as Exhibit (a) and made a part hereof."

That the said defendant, acting by and through its duly authorized officer, one B. H. London, well knowing that at the time of the making of the aforementioned lease with the complainants that according to the regulations of the State of Florida and City of Miami Beach, Florida, that the said defendant, or anyone else was not permitted to make use of four rooms on the fourth floor of the said hotel as bedrooms, did then and there make a fraudulent representation to the lessees that the said lessees could use the said fifty-three rooms, including the four rooms heretofore mentioned in this paragraph as bedrooms and by reason of such fraudulent representations, in-

duced your complainants to enter into and make the said lease heretofore mentioned; that thereafter your complainants were informed by the city officials of the city of Miami Beach, Florida, that the said four rooms on the fourth floor of the said hotel could not be used as bedrooms and that your complainants immediately notified the defendant and the defendant agreed and promised that in consideration of the representations and averments on the part of the defendant to the complainants, that he would make certain changes in the construction and completion of the building in which the said hotel was situate, so that the requirements of the State of Florida and City of Miami Beach would be met and the complainants would thereafter have the use of the said four rooms as bedrooms, but notwithstanding such promise and agreements on the part of the defendant, the said defendant failed to keep such promise and agreement and
201 has violated the terms of the both written and oral agreement and the said four rooms have been condemned by the building inspector of the city of Miami Beach, Florida, by reason of the said defendant failing to comply with the regulations of the city of Miami Beach, Florida; that the complainants have been unable to rent the said four bedrooms and have been deprived of the use and benefit of the said rooms for hotel purposes, all of which has operated to the grave and irreparable damage of your complainants.

VI

Your complainants further allege that the seventh covenant of said lease on the part of the lessor to be performed was as follows:

"7. That said lessor shall insure the said premises against fire and hurricane."

That your petitioners have reason to believe and therefore aver that the said lessor is not carrying any adequate insurance against fire and hurricane on said premises, notwithstanding his covenant so to do, and your complainants state that by reason thereof, they are not protected or secured for the sum of money by them paid and to be paid in accordance with the terms and conditions of said lease; that the said lease contains a covenant as follows:

"If the premises shall be damaged by fire or other cause so as to be capable of being repaired within a reasonable time, the lessor shall have the option to repair the same and during the time that the repairs are being made, the lessor shall remit to the lessees a just and fair portion of the rent according to the nature of the damage sustained and according to the extent that the lessees are deprived of the use of the said premises."

That on the 17th day of February, A. D. 1931, the solarium located on the roof of the hotel leased by the defendant to the complainants was damaged by high and great winds occurring on such date and that your complainants notified the defendant that under and by virtue of the aforementioned clause in the said lease, the said damage was capable of being repaired within a reasonable time and that they

desire that the said damage be repaired and although such notice was given and although the defendant is well aware of the nature of the solarium and its necessary use by the guests of the hotel, the said defendant has failed and neglected to make such repairs; that the said lease contains the following provision:

"1. That it will paint the woodwork, walls, and ceilings of the sleeping rooms and halls of the premises and will complete the
202 solarium on half of the roof in the following manner on or before November 1, 1930; to wit, to build a slat wooden floor with a six-foot partition in the middle and a four-foot screen on the outside of pipe and canvass to be approved by the building inspector."

That although the said lessor has covenanted to paint the woodwork, walls and ceilings of the sleeping rooms and halls of the premises and further covenanted to complete the walls on half of thereof by building a slat wooden floor with a six-foot partition and a four-foot screen on the outside of pipe and canvass to be approved by the building inspector, the said defendant failed to do this work and failed to obtain the approval of the building inspector and the said damage arising on February 17, A. D. 1931, by the winds occurring at that time to a great extent was increased by the failure of the defendant to comply with the aforementioned covenant to make such improvements on the solarium.

VII

Your complainants further allege that the lease contained the following provision:

"Provided the $7,500 payable is made on February 15th, A. D. 1931, the said lessor will pay the lessees 6% interest on said $7,500 from the said date until November 1, 1932."

That notwithstanding the fact that the said lease contained the following provision the defendant served your complainants with a notice requesting, directing, and demanding that the said complainants pay to the defendant the sum of $7,500, a copy of which notice is attached hereto and made a part of this bill of complaint as Exhibit B if duly set out herein; said interest amounting to $768.75. Your complainants further allege that they have been served with a writ of garnishment in the case of: Trustworthy National Laundries Inc. v. The London Operating Company, said writ being issued out of the Civil Court of Record in and for Dade County, Florida, requiring the complainants to state on oath in writing whether they were indebted to the defendant at the time the service of the said writ, and the said complainants have been notified that the plaintiff in the suit hereinbefore mentioned expects to recover of and from the defendant the sum of $145.39; your complainants further
203 state that the London Operating Company mentioned in the suit is the same London Operating Company as the defendant in this suit and that your complainants being indebted to the said London Operating Company under the law are required to

retain a sum double the amount of the claim of the plaintiff in the aforementioned suit, and therefore could not safely comply with the demand of the defendant. Complainants further aver that in the use of the premises herein mentioned and described as a hotel, it is necessary that telephone service be furnished for the guests of such hotel and for this purpose a contract has been entered into with the Southern Bell Telephone and Telegraph Company at Miami, Florida, for the installation of a switchboard and necessary equipment; on the 14th day of February A. D. 1931 your complainants received a letter from the said Southern Bell Tel. & Tel. Company advising your complainants that there is a balance due for former telephone service furnished to the defendant in the amount of $456.75, and that unless said amount is forwith paid, to wit, on or before Feb. 20, 1931 the telephone service in and to the hotel will be discontinued; all of which will more specifically appear from what certain letter received from the Assistant District Manager, J. A. Monneyham, of the Sou. Bell Tel. & Tel. Co. A copy of which is hereto attached and marked "Exhibit C" and made a part of this amended bill of complaint as fully as if set out herein. Your complainants further show that before said telephone service was installed at the request of your complainants, the Sou. Bell Tel. & Tel. Co. declined and refused to render any service in said hotel until the aforementioned bill was paid and the defendant, The London Operating Company, acting by and through B. H. London, its secretary, manager, and agent agreed and consented to pay said bill and upon this representation the said telephone company installed the necessary equipment for telephone service. Your complainants show that if said telephone service is discontinued it will seriously damage and injure in the operation of their hotel and cause them to continue to suffer an irreparable injury. Your complainants are informed and upon information and belief aver that a large portion
of the charges contained in the bill of the telephone company
204 was for service rendered to the guests in the hotel which were
charged upon the bills presented to the said guests in the hotel and were paid by them and the money received by the said B. H. London, who is secretary and treasurer of the said The London Operating Company, was never paid to the said Telephone Company as should have been done.

VIII

Your complainants further state that under and by virtue of the terms of the said lease there was a payment of $7,500 due the lessor on the 15th day of February, A. D. 1931, less the amount of interest as hereinbefore alleged and outlined, but the said complainants fear to make payments of that amount to the lessor because of the failure of the said lessor to fully comply with each and every of the covenants and conditions of the said lease on the part of the lessor to be performed and which covenants it has already failed and

neglected to perform and by reason of the false representations made as hereinbefore alleged, your complainants state to this Honorable Court that they are ready, willing and able to pay and do hereby offer to make tender and do hereby tender into the registry of the court $7,500 in cash, so that the said lessor will be secured for the payment of the sum of money which is due to it, the said sum of money to be held in the registry of the court at the direction and order of the court as may seem proper and meet to this Honorable Court.

IX

Your complainants further allege that your information and belief the defendant is insolvent, having liabilities in excess of its assets and judgment recovered against it would be of no value; that they have no adequate remedy at law, there is now pending in this Honorable Court against the defendant suits to enforce liens approximating $50,000 for work done and materials furnished in the erection of hotel mentioned in the aforementioned lease and that your complainants fear that unless this court enters a decree commanding the defendant to specifically perform each and every of the covenants by it agreed and by it to be performed, that they will be jeopardized in their rights by paying over the afore-
295 mentioned $7,500; that if they fail to make the payment on the 15th day of February 1931, that the defendant will institute proceedings to oust your complainants and evict them from the premises, as the said defendant has advised your complainants he would do and your complainants will have no right under the law to set up as a defense to ouster proceedings, the failure of the defendant, the lessor in said lease to comply with the terms of its contract and unless this honorable court enter a restraining order against the defendant enjoining it from instituting any ouster proceedings of whatever nature, your complainants will be gravely and irreparably damaged.

X

Your complainants further allege that by reason of the defendant breaching the covenants under the aforementioned lease the said complainants have had the use of only of forty-nine rooms in the said hotel as bedrooms and they have been without the use of four rooms as bedrooms; that because of this they have been damaged to the extent of $30 per day from the 3rd day of November, A. D. 1930, to the present time and will continue to be damaged $30 a day so long as the said rooms are not available as bedrooms, and until the expiration of the lease; that they have no means of obtaining relief on account of the insolvency of the defendant save and except this court take an accounting of such damages they have sustained and permit your complainants to off set the said damage on the amount due to the defendant in said lease.

Wherefore, because of the matters hereinbefore related your complainants state that they have no adequate remedy at law, that the defendant, The London Operating Company, is an insolvent corporation; and your complainants pray that this Hon. Court permit your complainants to deposit the sum of $7,500 into the registry of the court and that this honorable court issue a temporary and or permanent injunction out of and from this court enjoining and restraining the said defendant, The London Operating Company, its agents, servants, attorneys, or assigns from instituting any ouster proceedings against the lessees, complainants in this cause,
206 because of their failure to pay said $7,500 to the defendant on the 15th day of February, A. D. 1931, and to issue temporary and or permanent restraining order enjoining it from in any manner interferring with the possession of the premises of your complainants; your complainants further pray that the defendant be required by order of this court to specifically perform the covenants hereinbefore mentioned and enumerated in the lease described herein and that upon failure of the defendant, The London Operating Company, to specifically perform, or upon its inability to perform by reason of its financial condition then this Honorable Court shall enter an order permitting your complainants to perform the obligations required of any by the defendant by and under the terms of the lease, to take an accounting both as to their past damage by reason of breach of covenant or lease by lessor, and as to the cost of the labor and materials necessary in carrying out the covenants of the defendant as required of the defendant under the terms of the lease, and such amounts as are found to be due to your complainants shall be deducted from the amount paid into the registry of the court and the balance delivered to your defendant.

Your complainants further pray that the defendant be required by order of this court to specifically perform the covenants hereinbefore-mentioned and enumerated that it would perform and which covenants as above alleged the said defendant The London Operating Company failed and neglected to perform and complainants pray for such further and other relief in the premises as to this court shall seem meet and proper.

And to the end therefore that the defendant may if it can show wherein your complainants should not have the relief herein and hereby prayed, and may full, true, direct, and perfect answer make unto all of the matters and things contained in this bill of complaint, but not under oath, answer under oath being hereby expressly waived. May it please your honors to grant unto your complainants the state's most gracious writ of summons in chancery, issuing out of and under the seal of this Honorable Court to be directed to the defendant, The London Operating Company, a
207 Florida corporation commanding it upon a day certain and under certain penalty, to be therein inserted, to appear before this Honorable court and then and there full, true, direct, and perfect answer make to each and all of the premises; and further to

perform and abide by such other and further orders and decrees as to your honors shall seem meet and just.

And your complainants will ever pray.

ARONOVITZ & GOLDSTEIN,
Solicitors for Complainants.
R. A. JOHNSTON,
Solicitor for Complainants.

STATE OF FLORIDA,
Dade County:

Personally appeared before me, the undersigned authority, Harry Masser, sometimes called Harry Messer, and Morris Baron, who after being first duly sworn, depose and say that they are the complainants named in the foregoing cause, that they have read the allegations of this amended bill of complaint and state that the same are true wherein the same are affirmatively alleged and state that those matters that are alleged on information and belief, they verily believe to be true.

HARRY MASSER,
M. BARON,
Complainants.

Sworn to and subscribed before me this 19th day of February A. D. 1931.

[N. P. SEAL] REGGIE GOLDSTEIN,
Notary Public State of Florida at Large.

Commission expires July 10, 1933.

208 *Exhibit A*

This Indenture, Made this 15th day of April A. D. 1930 by and between The London Operating Company, a Florida corporation, hereinafter called the lessor which term shall include its successors, legal representatives, and assigns, wherever the context so requires or admits, and Harry Masser and Morris Baron of Miami Beach, Dade County, Florida, hereinafter called the lessees which term shall include their heirs and assigns wherever the context so requires or admits, Witnesseth:

That the lessor, subject to the conditions and limitations hereinafter mentioned, in consideration of the rent and the lessees' covenants hereinafter reserved and contained, does hereby demise and lease unto the lessees the following described premises, to wit:

That certain hotel known as "The London Arms" situated upon Lot 12 of Block 12 of Ocean Beach #1, according to the plat thereof recorded in Plat Book 3 at page 11, of the Public Records of Dade County, Florida, together with all furniture, furnishings, and equipment now located in said hotel, a complete description of which is attached hereto as Exhibit A and made a part of this lease.

To have and to hold the said premises unto the said lessees for a period of three years beginning on the 1st day of November, A. D. 1930, and ending on the 31st day of October, A. D. 1933.

And the Lessees hereby agree and bind themselves, well and truly, to pay as rental for the said premises the following amount, to wit, the sum of $45,000.00 payable as follows: $5,000 on the signing of this lease, receipt whereof is hereby acknowledged; $10,000 on the first day of November, A. D. 1930; $7,500 on the 15th day of February 1931: $15,000 on the first day of November, A. D. 1931; and $7,500 on the first day of November A. D. 1932. Said payments shall be made at the Miami-Beach Bank & Trust Company, Miami Beach, Florida, or at such other place as the lessor shall indicate in writing.

If for any reason default is made in the payment of rent herein required, the lessor may at its option declare the lease at an end and may immediately reenter and retake the premises and repossess the same as in their former estate and in such an event the lessees hereby release unto the lessor and waive unto said lessor any damage or claims of damage that may accrue to them in the said retaking of said premises by the said lessor and the fact that the lessor may have taken possession of the premises and may have leased the same to other parties shall not be any defense to any action for rent due for the unexpired term. However, in the event the lessor releases said premises the said lessees shall be given credit for the amount which the said lessor receives for said releasing of said premises during the unexpired term herein provided for.

If there is a failure for a period of 15 days to make any of the payments covenanted to be paid under this lease, the lessor may apply to the proper courts for a receiver to take charge of said premises and collect the rents and profits therefrom and hold same pending the outcome of said litigation. And the lessees hereby covenant and agree that they will not contest the appointment of said receiver and hereby consent in advance to the appointment of a receiver in such an event.

And the lessees for and in consideration of the use and occupancy of said premises, as aforesaid, and to the intent that the obligation may continue throughout the term hereby created, hereby covenant and agree with the lessor as follows:

209 1. To pay the rent at the time and in the amount and manner herein provided.

2. To bear, pay, and discharge all gas, electric light, telephone, telegraph, water bills, and other charges which may become payable during the continuation of this lease.

3. That they will not use the premises or permit the premises to be used for any illegal or immoral purposes.

4. That they will remove at their own expense all garbage, trash, and the like accumulated on the premises by reason of the use and occupancy of said premises and to keep the premises in a clean and sanitary condition.

5. That they will keep the interior of the premises, together with the windows, doors, fixtures, walls, and appurtenances, in good substantial state of repair and condition.

6. That the said premises will be used only as a hotel and for hotel purposes.

7. That lessees will not assign the premises on this lease or any part thereof without the written consent of the lessor. The lessees, however, shall have the right to sublet said premises, or any portion thereof, to responsible parties but such subletting shall not in any manner effect the terms and conditions of the lease and shall not be construed in any manner as releasing the lessees herein from any and all liability to care for and protect said property or to do and perform all of the terms, conditions, and covenants of this lease or to pay the rents provided for herein.

8. To permit the lessor or its agents to enter upon the premises or any part thereof at all reasonable hours for the purpose of examining the same or making such repairs or alterations as may be necessary for the safety or preservation thereof and no claim or action for damages or set-off of rent by reason or on account of such entry, repairs, or alterations shall be made, had, or allowed.

9. No alterations, additions, or improvements shall be made in or to the premises by the lessees without the written consent of the lessor, and the additions and improvements made by the lessees shall belong to the lessor. It is agreed at this time, however, that the lessees may make a door or doors from a window on the south side of the building and leading into the lobby of the hotel. The cost of the material and labor in the construction of said door or doors shall be paid by the lessees.

10. That the lessees have examined and know the condition of the premises and will receive and accept same in its present condition on November 1, 1930, with the exception of the painting and completion of the solarium as herein provided for.

11. To protect the lessor and save it harmless from any and all liability for any damages or claim of damage arising from any cause or nature whatsoever to any occupant of the said premises or to any other person.

12. If the premises shall be damaged by fire or other cause so as to be capable of being repaired within a reasonable time, the lessor shall have the option to repair the same, and during the time that the repairs are being made the lessor shall remit to the lessee a just and fair portion of the rent according to the nature of the damage sustained and according to the extent that the lessees are deprived of the use of the said premises; provided, however, that should said premises be damaged by fire or other cause during the summer months and same be repaired by lessor before December 1st of said year then said lessee shall not be entitled to any damages or

210 13. It is understood and agreed that no waiver of any condition or agreement in this instrument contained or acquiescence in any breach thereof shall be taken to constitute a waiver of any subsequent breach and that no damage to or destruction of any of the buildings on the premises by fire or otherwise shall be taken to entitle the lessees to surrender the demised premises nor have the effect of terminating this lease.

14. That during the term of this lease the lessees will pay $200 per year or the sum of $900 to Claude Neon Southern Corp. or its agents for the London Arms Hotel Neon Sign attached to the front of the building.

15. That the premises shall not be used in such a manner as to be or create a nuisance; that lessees shall at all times maintain said premises in such a manner as will not mar the appearance of said property.

16. That said lessees at the end of the term to deliver to the lessor said premises together with all furniture, furnishings, and equipment located in said hotel and described in the attached inventory thereof marked "Exhibit A" and attached hereto, said furniture, furnishings, and equipment to be in as good state of repair as they are now, damage by wear and the elements alone excepted.

17. In case of the failure of the lessees or their assigns to pay the rent herein reserved when the same shall become due and the same is placed with an attorney for collection the lessees agree to pay the lessor an attorney's fee of 10% of the amount due the lessor together with all legal costs and charges incidental thereto.

UPON the performance by the lessees of the agreements and conditions herein set forth and upon the payments herein required to be made, the lessor hereby covenants as follows:

1. That it will paint the woodwork, walls, and ceilings of the sleeping rooms and halls of the premises and will complete the solarium on half of the roof in the following manner on or before November 1, 1930; to wit, to build a slat wooden floor with a six-foot partition in the middle and a four-foot screen on the outside of pipe and canvass to be approved by the building inspector.

2. To deliver possession of said premises to lessees on November 1, 1930.

3. That said lessees shall and may peaceably and quietly have, hold, and enjoy the demised premises during the term aforesaid.

4. That the lessor shall keep in good state of repair the roof and outside walls of the buildings.

5. That the lessor shall completely furnish 53 rooms according to an inventory attached hereto as Exhibit A and made a part hereof.

6. Provided the $7,500 payment is made on Feb. 15, 1931 said lessor will pay the lessees 6% interest on said $7,500 from the said date until November 1, 1932.

7. That said lessor shall insure the said premises against fire and hurricane.

This lease is executed in triplicate.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE Hereunto set their hands and seals the day and year first hereinabove written.

THE LONDON OPERATING COMPANY,
By L. LONDON, *Pres. Lessor.*
HARRY MASSER.
MORRIS BARON.

Attest:

B. H. LONDON, *Sec'y.*

211 Witnesses:
LILLIAN C. KLINE.
ED. M. RELMAN.
BENG. F. LEVINSON.
L. RITTGERS.

STATE OF FLORIDA,
County of Dade:

Before me, the undersigned authority, personally appeared L. London and B. H. London, president and secretary respectively of The London Operating Company, a Florida corporation, and Moris Baron and _____ who acknowledged before me that they executed the foregoing instrument freely and voluntarily for the purposes therein set out.

In witness whereof I have hereunto set my hand and official seal at Miami, Dade County, Florida, this 15th day of April 1930.

[N. P. SEAL] BENJAMIN COHEN.
Notary Public State of Fla. at Large.

Commission expires Nov. 26, 1932.

STATE OF OHIO,
County of Franklin:

I hereby certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Harry Masser, to be well known to be the person described in and who executed the foregoing lease, and he acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

Witness my hand and official seal at Columbus, County of Franklin and State of Ohio, this 30th day of April 1930.

[N. P. SEAL] LOUISE RITTGERS,
Notary Public State of Ohio.
Louise Rittgers, N. P.

Commission expires February 1931.

212 Inventory of London Arms Hotel, April 15, 1930

Bedrooms:
53 lamps
103 beds
103 mattresses
103 springs
53 rugs
53 dressers
53 chairs
53 night stands
53 desks
53 rooms, drapes and curtains
105 pillows
150 window shades

Linen supplies:
408 sheets
196 pillow cases
68 green blankets
29 pink blankets
7 gray and blue blankets
35 spreads
67 green spreads
4 white spreads
95 pads
196 scarfs
50 bath mats
413 hand towels
444 bath towels

Kitchen & dining room linen:
68 square table clothes (tops)
78 table cloths
414 napkins
25 dish towels
67 side towels
26 table pads
3 pcs. table padding

Kitchen equipment:
180 forks
180 knives
180 tea spoons
120 soup spoons
226 dinner plates
276 salad plates
220 bread and butter plates
177 soup plates
289 fruit dishes
160 cereal dishes
119 vegetable dishes
120 casserole dishes
27 relish dishes 11
112 custard cups
83 small platters
46 large platters
2 extra large platters
25 cups
25 saucers
12 syrup pitchers
18 demitasse cups
66 consumme cups
127 amber water glasses
99 amber parfait glasses
18 amber ice tea glasses
77 orange
2 mixing bowls, 2 dishpans
8 vegetable spoons
80 water glasses

Kitchen equipment (cont.):
21 salt and pepper
131 creamers
4 mustard jars
1 crescent dish washer, Model K
1 Blodgett bake over
1 eight slice elec. toaster
1 22-quart mixer elec. with attachments meat chopper, egg beater, juice extractor,
4 gas ranges
1 steam table
1 battery coffe' urn (3)
2 (3) ice boxes
1 scale
18 stock pots
54 toast covers
78 coffee & tea pots
23 vinegar and oil bottles
1 gravy pitchers
12 trays
24 amber water bottles
34 silver sugar bowls
2 ash trays
4 enamel pitchers
15 cake pans
42 gallon crocks
16 pie tins
11 frying pans
2 biscuit cutters
1 egg slicer
3 bake pans
1 can opener
29 bake pans
1 can opener
29 bake pans
4 egg whips
1 desk and chair
1 meat saw
1 gal. and quart measure

Dining room:
30 tables
120 chairs
12 lamps
8 stands
1 tray stands
2 side boards
2 runners of carpet
1 Culendar
1 sieve
1 funnel
1 carving knofe

Lobby:
4 davenport and chairs
12 extra chairs
2 Cogswell sets
6 end tables
6 lamps
1 large center table
1 octagon shape table
2 table lamps
1 gas heater in fire place
2 large rugs
1 center runner
2 writing desks

213 *Exhibit 2*

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County

In Chancery, No. 32055

HARRY MASSER, SOMETIMES CALLED HARRY MESSER AND MORRIS BARON, complainants

vs.

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, DEFENDANT

FINAL DECREE

The above-styled and entitled cause comes on before this court for final hearing and upon exceptions filed by the complainants to the report of the master, and upon defendant's petition for an order requiring the Clerk of this Court to pay to the defendant the seventy-five Hundred ($7,500.00) Dollars now in the registry of this court in this cause, and argument of counsel for the respective parties having first been had, and the court being fully advised in the premises, it appears unto the court that said bill is without equity (which makes it unnecessary to consider the master's report and exceptions thereto), and it further appearing unto the court that there is paid into the registry of this court the sum of $7,500.00 by the complainants herein as an installment of rent due the defendant on the 15th day of February 1931, and that same has been paid into court pursuant to an order of this court made on the 24th day of March 1931, and that said payment was made as appears by said order subject to the further orders of the court in this cause.

It is Considered, Ordered, Adjudged, and Decreed that—

(1) Said cause be and the same is hereby dismissed without prejudice, however, to the rights of the parties;

(2) That the said sum of $7,500.00 deposited in the registry of this court be paid by the Clerk of this Court on or after the 1st day of February 1932 to the London Operating Company to be applied upon that installment of rent falling due on the 15th day of February 1931, as described in said bill of complaint and amended bill;

(3) That the defendant, The London Operating Company, a Florida corporation, do have and recover of and from the complainants, Harry Masser, sometimes called Harry Messer; and Morris Baron, the cost of these proceedings, to be hereafter taxed.

Done and Ordered In Chambers, at Miami, Florida, this 26th Day of January, A. D. 1932.

PAUL D. BARNS,
Circuit Judge.

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Exhibit 3

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County

In Chancery, No. 32055

HARRY MASSER, SOMETIMES CALLED HARRY MESSER, AND MORRIS BARON, complainants

vs.

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, defendant

NOTICE OF APPEAL

Comes now the above named complainants, Harry Masser, sometimes called Harry Messer and Morris Baron, by and through their undersigned Solicitors, Vincent C. Giblin and Aronovitz & Goldstein, give notice to The London Operating Company, a Florida corporation, that they now apply and enter this their appeal from the Order of the Court made and entered in the above styled cause on to wit, the 26th day of January, A. D. 1932, wherein the said Judge dismissed the foregoing cause without prejudice to the rights of the parties, ordered that the $7,500.00 deposited in the registry of this court be paid by the clerk on or before the 1st day of February, A. D. 1932, to the London Operating Company, to be applied upon that installment of rent falling due on the 15th day of February, A. D. 1931, and that the said The London Operating Company do have and recover of and from the complainants the costs in this case; which appeal is made to the Supreme Court of the State of Florida and the return day thereof is now fixed as the 12th day of March, A. D. 1932.

The Clerk of the above styled court will please enter this notice of appeal in the proper Chancery Order Book and oblige

ARNOVITZ & GOLDSTEIN,
VINCENT C. GIBLIN,
Solicitors for Complainants.

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Exhibit 4

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County

In Chancery, No. 32055

HARRY MASSER, SOMETIMES CALLED HARRY MESSER, AND MORRIS Maron, complainants

vs.

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, defendant

ORDER ALLOWING AND FIXING CONDITIONS OF SUPERSEDEAS

This cause coming on to be heard upon application of complainants' solicitors for an order of supersedeas and for an order granting

and fixing the terms and conditions of a supersedeas, and the court being fully advised in the premises, it is upon consideration ordered and adjudged, that the appeal entered in said cause on the 28th day of January, A. D. 1932, do operate as a supersedeas upon the complainants or either of them giving a bond payable to the defendant in the sum of $2,000.00; said bond to contain the following conditions.

"Now therefore, the conditions of this obligation are that the undersigned shall in the event the said order appealed from, be affirmed or said appeal be dismissed, pay to the said defendant all costs and damages as may be occasioned by reason of said appeal and supersedeas, also all cost now or as may be hereafter taxed against complainant herein by this court, then this obligation to be null and void, otherwise to remain in full force and effect."

The filing of said bond when approved by the Clerk of the said Court shall operate as a supersedeas.

Done and Ordered in Chambers, at Miami, Dade County, Florida, this 29th day of January, A. D. 1932.

PAUL D. BARNS,
Judge of the Circuit Court.

216 *Exhibit 5*

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, in Chancery, No. 32055

HARRY MASSER, SOMETIMES CALLED HARRY MESSER, AND MORRIS BARON, complainants

vs.

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, defendant

SUPERSEDEAS BOND.

Know All Men by These Presents, That I, Harry Masser as principal and New Jersey Fidelity & Plate Glass Insurance Company as surety are firmly held unto The London Operating Company, a Florida corporation, Defendant in the above named and stated cause in the sum of Two Thousand ($2,000.00) Dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals this 29th day of January, A. D. 1932.

Whereas, the said Harry Masser and Morris Baron, Complainants in the foregoing cause, instituted said suit and that Whereas, on the 26th day of January, A. D. 1932, the Honorable Paul D. Barns,

Judge of the above styled cause dismissed said case without prejudice to the rights of the party, ordered the Seventy-Five Hundred ($7,500.00) Dollars deposited in the registry of the Court by the Complainants to be paid to the Defendant and ordered further that the Defendant recover of the Complainants the costs in said cause; and Whereas, the said Complainants filed a Notice of Appeal from the order of the Court above mentioned, and Whereas, the said Honorable Paul D. Barns upon application made, granted
217 a supersedeas to the Complainants to have the effect to suspend the Order of the Honorable Paul D. Barns hereinbefore mentioned, pending the hearing and determination of the said cause in the Supreme Court of Florida.

Now, Therefore, the Conditions of This Obligation are that the undersigned shall in the event the said order appealed from, be affirmed or said appeal be dismissed, pay to the said Defendant all costs and damages as may be occasioned by reason of said appeal and supersedeas, also all costs now or as my be hereafter taxed against complainants herein by this Court, then this obligation to be null and void, otherwise to remain in full force and effect.

(Signed) HARRY MASSER, *Principal.*
NEW JERSEY FIDELITY &
PLATE GLASS INSURANCE COMPANY.
By (Signed) RICHARD I. BRONSON, *Surety.*

[SEAL.]

Taken and approved by and before me this 29th day of January, A. D. 1932.

(Signed) E. B. LEATHERMAN,
Clerk of the Circuit Court.

[SEAL] By E. W. TRAMMELL,
Deputy Clerk.

Filed this 29 day of Jan. A. D. 1932, and recorded this 29 day of Jan. A. D. 1932, in bond book 4 on page 434.

E. B. LEATHERMAN,
[SEAL] *Clerk Circuit Court.*
By (Signed) H. GARDNER,
Deputy.

STATE OF FLORIDA,
County of Dade, ss:

I hereby certify that the above and foregoing is a true and correct copy of a Supersedeas Bond filed in my office the 29 day of Jan., A. D. 1932, and recorded in Bond Book 4, at page 434. Witness my hand and official seal this 13 day of May, A. D. 1933.

[SEAL] E. B. LEATHERMAN,
Clerk Circuit Court.
By F. L. DAVIS, *D. C.*

218 *Exhibit 6*

145 So. 72

In the Supreme Court of Florida

June Term, A. D. 1932

HARRY MASSER, SOMETIMES KNOWN AS HARRY MESSER, AND MORRIS BARON, appellants

vs.

THE LONDON OPERATING COMPANY, A CORPORATION, APPELLEE

Opinion filed August 23, 1932

Appeals from Circuit Court of Dade County, Florida, Hon. Paul D. Barns, Judge.

Aronovitz & Goldstein, Vincent C. Giblin, and R. A. Johnston, Solicitors for Appellants.

Price, Price & Hancock, Otto C. Stegmen, William B. Farley, and Carl T. Hoffman, Solicitors for Appellee.

DAVIS, *Commissioner:* The appellants, whom we will refer to as the lessees, and the appellee, whom we will refer to as the lessor, under date of April 15, 1930, entered into a written agreement, wherein the lessor leased to the lessees a hotel building, known as The London Arms Hotel, located at Miami Beach, Florida, for a period of three years after November 1st, 1930. The lessor agreed to deliver possession of the property to the lessees on November 1st, 1930. The lessees agreed to pay to the lessor, as rental for the property forty-five thousand dollars ($45,000.00). Five thousand dollars ($5,000.00) of the rental was paid upon the execution of the agreement, ten thousand dollars ($10,000.00) was payable on November 1st, 1930, seventy-five hundred dollars ($7,500.00) on February 15, 1939, fifteen thousand dollars ($15,000.00) on November 1st, 1931, and seventy-five hundred dollars ($7,500.00) on November 1st, 1932. The ten thousand dollars ($10,000.00) payable on November 1st, 1930, was paid November 3rd, 1930, the date upon which the lessees went
219 into possession of the leased property. In the agreement of lease, the lessor covenanted as follows (Tr. 17): 'that it will paint the woodwork, walls and ceilings of the sleeping rooms and halls of the premises and will complete the solarium on half of the roof in the following manner on or before November 1st, 1930; to wit: to build a slat wooden floor with a six-foot partition in the middle and a four-foot screen on the outside, pipe and canvass to be approved by the building inspector.'"

The argument also contains among others, the following provision:

"10. That the lessees have examined and know the condition of the premises and will receive and accept same in its present condi-

tion on November 1, 1930, with the exception of the painting and completion of the solarium as herein provided for."

On March 25th, 1931, in a suit theretofore commenced in Dade County, Florida, by the lessees, complainants filed their amended bill of complaint for specific performance of certain covenants of the lease alleged to be binding upon the lessors, and for an injunction restraining the lessor from bringing summary ouster proceedings for the nonpayment of the installment of rent in the amount of $7,500.00 which became due and payable on February 15, 1931. A demurrer to the amended bill was filed the said 25th day of March and on the same day an order of the court was filed overruling the demurrer and temporarily restraining the lessor from "enforcing a forfeiture of the lease, described in the amended bill, for nonpayment of the seventy-five hundred ($7,500.00) Dollar installment of rent due to the defendant on the 15th day of February, A. D. 1931, as described in the amended bill, and from filing proceeding at law, or otherwise interfering with the possession by the complainants of the premises described in the amended bill of complaint and in the said lease: Provided that the said complainants shall first pay into the registry of this court to the clerk thereof, subject to the further orders of this court in this cause, the said sum of Seventy-five Hundred ($7,500.00) Dollars, on or before the 25th day of March, A. D. 1931", and providing also for the filing of a bond before the injunction should become effective. The said sum of $7,500.00 was
220 paid into the registry of the court and the said bond was given pursuant to the terms of the order. On the 3rd of April, the lessor filed a motion to dissolve the injunction and on the 6th day of April 1931, the lessor filed an answer to the bill. The motion to dissolve the injunction come up for hearing and thereupon the court, on May 13, 1931, ordered and decreed that the said injunction be dissolved and set aside. From this order, the lessee appealed to this court. The appeal did not stay the suit, so the cause proceeded to a final hearing after it had been referred to a master before whom a great volume of testimony was taken. The final decree omitting the names of the parties reads as follows:

"The above-styled and entitled cause comes on before this court for final hearing and upon exceptions filed by the complainants to the report of the master, and upon defendant's petition for an order requiring the clerk of this court to pay to the defendant the seventy-five hundred dollars ($7,500.00) now in the registry of this court in this cause, and argument of counsel for the respective parties having first been had, and the court being fully advised in the premises, it appears unto the court that said bill is without equity (which make it unnecessary to consider the master's report and exceptions thereto), and it further appearing unto the court that there is paid into the registry of this court the sum of seventy-five hundred dollars by the complainants herein as an installment of rent due the defendant on the 15th day of February, 1931, and that same has been paid into court pursuant to an order of this court made on the 24th day of

March, 1931, and that said payment was made as appears by said order subject to the further orders of the court in this cause.

"It is considered, ordered, adjudged, and decreed, that

(1) Said cause be and the same is hereby dismissed without prejudice, however, to the rights of the parties;

"(2) That the $7,500.00 deposited in the registry of this court be paid by the clerk of this court on or after the 1st day of February, 1932, to the London Operating Company to be applied upon that installment of rent falling due on the 15th day of February, 1931, as described in said bill of complaint and amended bill;

"(3) That the defendant, The London Operating Company, a Florida corporation, do have and recover of and from the complainants, Harry Masser, sometimes called Harry Messer, and Morris Baron, the cost of these proceedings, to be hereafter taxed."

From this decree the lessees took an appeal. At the request of appellants, the two appeals have been consolidated here and argued together.

Upon the appeal from the interlocutory order appellants have assigned as error the ruling of the court in dissolving and
221 setting aside the temporary injunction theretofore granted.

Upon the appeal from the final decree the appellants have assigned as error the making of said decree; the order dismissing the cause, and also "its order of final decree in that it was error for the court to direct the clerk of the court to pay to the London Operating Company, on or after February 1st, 1932, the sum of $7,500.00 deposited in the registry of the court by the complainants, which sum as directed by the court was to be applied upon the installment of rent falling due on February 15, 1931, as described in the amended bill of complaint."

If the bill as amended is without equity, and no error was committed by the court in dismissing the cause for that reason when it came up for final hearing, it follows that the order dissolving the said injunction from which the first appeal was taken should be affirmed.

If the brief filed here in support of the appeal from the final decree, the able solicitor who signed it says:

"I cannot argue with conviction that the chancellor below erred in dismissing the cause, upon the sole ground that the amended bill is without equity, although the appellee's demurrer to the amended bill had been previously overruled by another judge and the cause had progressed to a final hearing after the taking of the proofs. It will not be my purpose, therefore, to argue the appellant's first or second assignment of error, both of which are predicated upon the dismissal of the amended bill for want of equity." But he also says:

"It is well to state, however, that my associate counsel entertain the conviction that the amended bill does state a cause for equitable relief; but it is unnecessary for them to file another brief upon this appeal because there views are fully set forth in a brief filed in this

court upon another appeal, which was from an interlocutory order in the cause."

Since the question raised upon the appeal from the interlocutory decree is not argued by appellants to sustain the appeal from the final decree, we deem it best to decide whether or not the court erred in dissolving the temporary injunction.

222 Upon the appeal from the interlocutory decree, lessees content merely that the lessor breached its covenant to paint, resulting in damage to the lessees, that the lessor threatened to commence summary proceedings to oust the lessees from the property for the nonpayment of rent, and that an action at law for damages is not adequate relief to lessees.

It has been declared repeatedly by this court, that the granting and dissolving of temporary injunctions lies in the sound discretion of the court. See I. R. S. Co. vs. E. C. Tr. Co., 28 Fla. 387, 10 So. 480, 29 A. S. R. 258; Shaw v. Palmer, 54 Fla. 490, 44 So. 953; Godwin vs. Phifer, 51 Fla. 441, 41 So. 597; Thursby vs. Stewart, — Fla. —, 138 So. 742.

Before the temporary injunction was granted, certain testimony was taken before the chancellor, and certain affidavits were filed in the cause before him. The lessor filed its answer to the bill before the motion to dissolve the said injunction was heard. This answer which was sworn to, took sharp issue with the allegations relating to a breach of lessor's covenant to paint the woodwork, walls, and ceilings of the sleeping rooms and halls, and also the allegations relating to threatened summary proceedings to oust lessees from the premises. Under such circumstances where an application is made to dissolve an injunction, though the bill may not be without equity, the chancellor must be governed by the weight of the evidence, and unless his ruling is clearly against the weight of the evidence, it will not be reversed on appeal. See Baya vs. Lake City, 44 Fla. 491, 33 So. 400; Richardson vs. Kittlewall, 45 Fla. 551, 33 So. 984; High Jaster Mfg. Co., 57 Fla. 437, 49 So. 158; Ogden vs. Eaile, 69 Fla. 458, 68 So. 671.

Here, even though we should hold that lessees have a right to withhold a due payment of rent where, because of a violation of the covenant to paint the woodwork, walls, and ceilings of the sleeping rooms and halls, a question we do not at this time decide, and that they are entitled to an injunction where summary process for their removal from the property is threatened because of their refusal to pay rent, we cannot say that the order dissolving the injunc-

223 tion was against the weight of the evidence that was before the court. It follows that the interlocutory order dissolving the injunction must be affirmed.

Since the only question argued here in the brief of appellants upon the appeal from the final decree is involved in the assignment or error addressed to that part of the decree which directed the clerk of the court to pay to the lessor the said sum of $7,500.00 deposited

in the registry of the court by the lessees, we will not consider any other question upon such appeal.

In and by their bill, the lessees offered and thereby tendered into the registry of the court, $7,500 in cash, "so that the lessor will be secured for the payment of the sum of money which is due to it, the said sum of money to be held in the registry of the court at the direction and order of the court as may seem proper and meet to this Honorable Court.", and they prayed that they be permitted to deposit the said sum in the registry of the court.

The answer asks for an accounting and that "such amounts as are found to be due to your complainants shall be deducted from the amount paid into the registry of the court and the balance delivered to your defendant." The cause was dismissed because it was determined and declared by the court that the "bill is without equity", and it is conceded by appellants that the decree is proper in that respect. Now, the question arises, did the court commit error in decreeing that the said sum of $7,500.00 be paid to the lessor to be applied upon the installment of rent which was due on February 15, 1931?

The bill indicates that the lessees had a claim for unliquidated damages growing out of alleged violation of certain covenants of the lessor, the amount of which they desired to have the court assess and deduct from the said sum of $7,500.00, and that they deposited the money in the registry of the court with authority to the court, after deducting the amount found to be due the lessees, to deliver the balance to the lessor.

It is the contention of appellants that the decree in
224 effect gave the defendant, the lessor, a judgment for $7,500.00 for rent due February 15, 1931; that the money was deposited as a condition precedent to the obtaining of certain relief and not as a tender to satisfy the lessor's claim for rent, and that the decree, in effect, says to the complainant: "We have taken your money and will not return it to you, nor will we give you any of the relief you have sought."

It appears from the bill that a tender of the money was not made for the purpose of meeting the installment of rent due on the 15th day of February 1931, in the event the suit should be dismissed, but that it was deposited with the intention, as we gather it from the allegations of the bill, of having the differences apparently existing between lessor and lessees adjusted, and that such sum be held at the "direction and order of the court as may seem proper and meet". One of the conditions imposed by the court for the issuance of the injunction, was the payment of said sum of $7,500 into the registry of the court "subject to the further orders of the court". This condition was imposed, no doubt, because of the offer contained in the bill.

In the light of what is shown by the bill, we cannot ascribe to the court the intention, when the injunction order was made, to summarily dispose of the said sum of $7,500.00, in the event the cause

should be subsequently dismissed, without an accounting and assessment of damages, if any, sustained by lessees. The bill could well be without equity and yet the lessees could have a claim against the lessor enforceable in an action at law.

We do not understand that the court, without the consent of the lessees, had the right, in this proceeding, to decree that the said sum of money be paid to the lessor to be applied upon the installment of rent that fell due on February 15th, 1931. The lessees offered to do equity by offering to pay money into the registry of the court and have the court deduct therefrom such amount as the court might find upon an accounting was due them, and after making such deduction, deliver to the lessor the balance. Before making effective
225 the order for an injunction, the court required lessees to comply with the terms of the offer. However, no accounting was had because the cause was dismissed for the reason that the bill was without equity. The cause having been dismissed for want of equity in the bill without accomplishing the purpose for which the money was offered as a deposit, the court was without authority to make and enter a decree in this proceeding that said sum be paid to the lessor. It follows that the court committed error in making such a decree.

As a general rule, the payment of money into court passes the title to the money so paid irrevocably to the party to whom it is rendered, though he does not accept the tender, or does not accept it until after judgment has gone against him. 26 R. C. L. 636; Mann vs. Seneca Sprout, 185 N. Y. 109, 77 N. E. 1018. 5 L. R. A. (NS) 561 and note, 7 Ann. Cas. 95; Sims v. Hardin, 132 Miss., 137, 95 So. 842; Fox v. Williams, 92 Wis. 320, 66 N. W. 357; Supply Ditch Co. v. Elliot, 10 Colo. 327, 15 Pac. 691, 3 A. S. R. 586; Ye Sang Co. v. Corbitt, 7 Sawy. 368, 9 Fed.; Coghlan v. S. Car. R. Co., 32 Fed. 316; Parker v. Beasly, 116 N. C. 1, 21 S. E. 955, 33 L. R. A. 231; Note 73 A. L. R. 1281; Stoltze v. Milwaukee, etc., R. Co., 113 Wis. 44, 88 N. W. 919, 90 A. S. R. 833; 38 Cyc. 170.

When, however, a party seeking affirmative relief has paid money into court upon condition that the party paying received something in return therefor, or that a contingency happen, it cannot be delivered to the adversary party until the condition upon which it was paid has been performed, or the contingency occurs. The proposition is well stated in 26 R. C. L. 658, as follows:

"Where one is not defending against a claim but is seeking affirmative relief to which, as a condition precedent, it is essential that he tender an amount due, the payment of the money tendered into court does not transfer the title to the other party, but it remains in the one making the tender subject to the final outcome of the suit. To hold otherwise would make the payment of money into court under the circumstances an exceedingly dangerous trap for one to enter, for, if he failed in the action, he would not only lose the right which he claimed but would also lose the money which he paid into court for the purpose of enforcing his right."

See also 18 C. J. 775; Levin v. Goodham (N. J.), 153 Atl. 476, 73 A. L. R. 1278 and Note page 1286; Dunn v. Hunt, 76 Minn. 196; 78 N. W. 1110.

226 The lessor assigned as cross error the dismissal of the cause "without prejudice", their contention being that it should have been dismissed with prejudice.

"It is within the sound judicial discretion of the chancellor to dismiss without prejudice a bill of complaint in equity, thereby enabling the complainant to relitigate the matter in controversy, and an appellant court will not adjudge such ruling to be error, unless it is made clearly to appear that the judicial discretion thereby exercised has been abused to the material detriment of the party affected by the ruling."

Philips v. Lindsay, — Fla. —, 166 So. 666; Veillard v. City of St. Petersburg, 87 Fla. 381; 100 So. 163; Tilgham Cypress Co. v. Young Co., 60 Fla. 382, 53 So. 939; Meffert v. Thomas, 51 Fla. 492, 40 So. 764.

While ever dismissal upon a final hearing is not necessarily an adjudication on the merits, yet the rule is that where the cause is at issue, and on final hearing, either upon pleadings and testimony, after the time for taking testimony has expired, a dismissal of the bill by the court is deemed to be a dismissal upon the merits; this being a conclusive presumption from the record, where the order is not made "without prejudice", and nothing appears to show that the dismissal was on other grounds. Da Costa v. Dibble, 40 Fla. 418, 24 So. 911. See also 34 C. J. 792.

A decree rendered on a demurrer is equally conclusive, by way of estoppel, of the facts confessed by the demurrer, as would be a decree containing a finding of the same facts, 34 C. J. 797, 799. See also Prall v. Prall, 58 Fla. 496, 50 So. 867, 27 L. R. A. (NS) 577.

A dismissal without prejudice is generally proper wherever the case has been disposed of for a reason not reaching the merits and it is probable that the plaintiff might be able to make out a good case. 21 C. J. 639, Deem v. Thomas, 51 Fla. 644, 40 So. 765; Meffert v. Thomas, 51 Fla. 492, 40 So. 764.

The lessor concedes that the bill is without equity and that the decree dismissing the cause for that reason was proper. The appellees agree that the cause should have been dismissed, but say it should not have been dismissed without prejudice. Therefore, we may well assume that there is no equity in the bill.

A bill will be dismissed at final hearing, if it is without equity,
even though a demurrer thereto has been overruled, or no
227 objection has been taken by the defendant in his pleadings.
21 C. J. 636.

It is the rule that even after a case has been brought here, this court can take notice of the insufficiency of a bill of complaint, though it has not been notified by the defendant in the lower court, and direct a dismissal of the bill. Norris v. Eikenberry — Fla. —, 137 So. 128; Cook v. Ponticus, 98 Fla. 373, 123 So. 765; Micou v.

McDonald, 55 Fla. 776, 46 So. 291; City of Jacksonville v. Massey Business College, 47 Fla. 339, 36 So. 432; Williams v. Peeples, 48 Fla. 316, 37 So. 572; Hendry v. Whidden, 48 Fla. 268, 37 So. 571; McNeill v. Lyong, 140 So. 921.

The action of the court in the instant case in dismissing the cause was tantamount to a reconsideration and reversal of its action on the demurrer to bill.

For a breach of a lessor's covenant, the lessee may have an action at law for his damages. 36 C. J. 795; Annotation 28 A. L. R. 1450.

The allegations of the bill show a probable right of lessees to an action at law against the lessor for breach of covenant.

The court having concluded that "the bill is without equity (which make it unnecessary to consider the master's report and exceptions thereto)", no abuse of sound judicial discretion of the chancellor in dismissing the cause without prejudice has been shown. See Boyd v. Hunter, — Fla. —, 140 So. 666.

The cause is remanded to the lower court with directions to reform its final decree so that it will conform to the views herein expressed.

PER CURIAM: The record of this cause having been considered by the court and the foregoing opinion prepared under Charter 14553, Acts of 1929, adopted by the court as its opinion, it is considered and ordered by the court that the interlocutory order of the court below, dissolving the injunction be, and the same is hereby, affirmed, and that the decree of the court below dismissing the cause be

228 and the same is hereby affirmed in part and reversed in part, and that the said cause is remanded to the lower court with directions to reform its final decree so that it will conform to the views of the court as set out in the said opinion.

Buford, C. J., and Whitfield, Brown, and Davis, J. J., concur; Ellis and Terrell, J. J., not participating.

Exhibit 7

Paid to General Master; complainant's share of Master's fees for taking testimony	$185.00
Paid to Court Reporter for Reporter's fees for taking testimony; writing up transcript of testimony taken before master	295.00
	480.00

229 In Circuit Court of Leon County

[Title omitted.]

Supplement to proof of claim no. 48

The London Operating Company, $1030.00

Filed Aug. 13, 1934

STATE OF FLORIDA,
Dade County:

At Miami, Dade County, Florida, on this 6th day of August, A. D. 1934, came B. H. London, who makes oath and says:

That he is the duly qualified and acting president of The London Operating Company, a Florida corporation.

That subsequent to the filing of the original Claim No. 48 in the above and foregoing cause, this claimant did file its petition before the Circuit Court of the Eleventh Judicial Circuit in said suit of Harry Masser, as complainant, versus this claimant as defendant, being Chancery #32055, for the purpose of taxing the amount of costs paid by this claimant in said cause.

That thereafter, to wit, on the 9th day of August, A. D. 1934, the said Circuit Court of the Eleventh Judicial Circuit did enter its order bearing said date taxing the costs in said cause paid by this claimant in the amount of $510.50 as appears from a certified copy of said order hereto attached and made a part hereof.

This deponent would now depose and say that the total amount due and owing to the claimant, The London Operating Company, as shown by the original proof of claim No. 48, filed in the foregoing cause and this supplement thereto, is in the sum of
230 $1,060.50, as shown by the attached statement made a part hereof.

B. H. LONDON.

Subscribed and sworn to before me this 9th day of August, A. D. 1934.

[SEAL] ROWENA STUBBS,
Notary Public State of Florida at Large.

My commission expires Sept. 16, 1934.

In the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County

In Chancery, No. 32055

HARRY MASSER, SOMETIMES CALLED HARRY MESSER, AND MORRIS BARON, complainants

vs.

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, DEFENDANT

A true copy of the Original on File in the Clerk's Office. Witness My Hand and Official Seal, this 9 day of Aug., A. D. 1934.

E. B. LEATHERMAN,
Clerk Circuit Court.
By F. D. GOULD, *D. C.*

ORDER TAXING COSTS

This cause coming on to be heard upon the petition of The London Operating Company, a Florida corporation, defendant in this cause, and it appearing to this court that by the final decree heretofore entered in this cause on the 26th day of January, A. D. 1932, the defendant in this cause, The London Operating Company, was per-

mitted to recover from the complainants in this cause the costs of these proceedings to be thereafter taxed; and it further appearing from said petition that the defendant has expended the following sums of money for costs of this proceeding, to wit:

Clerk's costs paid by the defendant	None
General Master's fees for taking testimony (portion paid by defendant)	$192.50
231 Court reporter fees for reporting and transcribing testimony (portion paid by deft.)	318.00
Total costs of proceedings paid by defendant	510.50

It is therefore ordered, adjudged, and decreed that the costs of the proceedings to be recovered by the defendant, The London Operating Company, against the complainants in this cause under the terms of the final decree entered in this cause on the 26th day of January, A. D. 1932, be and the same are hereby taxed and fixed at the sum of $510.50.

Done and Ordered at Miami, Florida, this 9th day of August, A. D. 1934.

PAUL D. BARNES,
Judge Circuit Court.

STATEMENT

Attorneys' fees paid to Attorneys for services rendered in Supreme Court in appeal taken from Final Decree as shown by original proof of claim	$450.00
Traveling expenses paid to Attorneys to argue appeal before Supreme Court as shown by original proof of claim	100.00
Costs of suit in the lower court as taxed by the order of the Circuit Court, certified copy of which is attached to supplement to proof of claim	510.00
	1,060.50

232 In Circuit Court of Leon County

[Title omitted.]

Proof of claim of David Hillman

Filed Sept. 3, 1934

STATE OF FLORIDA,
Leon County:

Before me, the undersigned authority, this day personally appeared Guyte P. McCord, who after being duly sworn deposes and says that he is attorney for David Hillman, claimant in the above-styled cause and has authority for and on behalf of said David Hillman to make this affidavit:

That heretofore to wit, May 17, 1932, Empire Realty Securities Corporation, being justly indebted to Wellborn C. Phillips in the sum of $500.00 made, executed, and delivered to said Wellborn C. Phillips its two promissory notes bearing said date, for the principal sum of $250.00 each, payable to the order of the said Wellborn C.

Phillips each on or before six (6) months after their date as aforesaid, at First National Bank of Miami, Florida; that on the same day, to wit, May 17th, 1932, to better secure and guarantee the payment of the said notes, the said Empire Realty Securities Corporation, a corporation, as principal, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation under the laws of the State of New Jersey, as surety, guaranteed and became surety for the payment of said promissory notes in the nature of two bonds or writings obligatory in the sum of $250.00 each, described said notes, respectively, and said bonds among other stipulations and conditions, provided:

"Now, if the above-described note be paid at Maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation to be null and void; else same shall remain in full force and effect."

That after the making and delivery of said notes and the said bonds, and before maturity of said notes, the said Wellborn C. Phillips, for a valuable consideration, endorsed the said notes in blank and transferred and delivered the said notes to David Hillman, claimant herein.

That said notes were duly presented for payment at First National Bank of Miami, Florida, on their maturity date, but were not paid; that although demand payment has been repeatedly made on the said Empire Realty Securities Corporation and on New Jersey
233 Fidelity & Plate Glass Insurance Company on and since the maturity of said notes, neither of the said notes or the principal or interest or any part thereof, has been paid by either the said principal or surety or by anyone in their behalf or in the behalf of either of them, and the said principal and interest evidenced by said notes are valid and existing obligations of the said maker and surety and due and owing to said claimant; that said claimant is at the time of the filing of this proof the lawful holder and owner of said notes and the said described bonds. The originals of said Notes and said bonds are hereto attached and made a part hereof by reference and marked Exhibits A. B. C. and D.

GUYTE P. MCCORD.

Sworn to and subscribed before me this 3rd day of September, 1934.

[SEAL] PAUL V. LANG,
Clerk of Circuit Court Leon County, Florida.

[Note]

No. 1; $250.00; Miami, Florida, May 17th 1932.

On or before Six (6) Months after date, for value received We promise to pay to the order of Wellborn C. Phillips two hundred

and fifty and no/100 dollars Payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6 per cent per annum from date until fully paid. Interests payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non payment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 6 per cent per annum, payable semiannually.

[SEAL] EMPIRE REALTY SECURITIES CORPORATION.
By J. H. RAND, JR., *President*.

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

Due ——— 19—

Wellborn C. Phillips, D. Hillman. Filed in evidence. Date 6 27 1934. Exhibit 2. C. M. Gay, Clerk Circuit Court. By J. H. Wells, D. C.

234 No. 3; $250.00; Miami, Florida, May 17th, 1932.

On on before Six (6) Months after date, for value received, We promise to pay to the order of Wellborn C. Phillips two hundred and fifty and no/100 dollars, Payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6 per cent per annum from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of non payment and protest, and in case suit shall be brought for the collection hereof or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 6 per cent per annum, payable semiannually.

[SEAL] EMPIRE REALTY SECURITIES CORPORATION.
By J. H. RAND, JR., *President*.

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

Due ——— 19—.

Wellborn C. Phillips, D. Hillman. Filed in Evidence. Date 6/27 1934. Exhibit 1. C. M. Gay, Clerk Circuit Court. B. J. H. Wells, D. C.

COLLECTION RECEIPT

Owner, D. H. Hillman; address ————. Received as agent the following:

Article	Dated	Payee	Payer	Due	Amount
Note	5/17	W. C. Phillips	Empire Realty Sec. Cop.	11/17	$250.00
	5/17	do	do		250.00

Instructions: This Bank acts only as collecting agent and assumes no responsibility beyond the exercise of due care.

All items credited are subject to final payment in cash or solvent credits.

FLORIDA BANK AT ORLANDO.
By H. E. CARMICHAEL.

Florida Bank at Orlando, Orlando, Florida

Date, 11/7/32.

This item, deposited by you, has been (Returned, Paid). Note Remarks (Kind of Paper), 2 notes. Deposited by D. H. Hillman. Address ———. Protest (Yes, No), (Credit, Mail.) Proceeds to Depositors. Due 11 17. Drawn by ——— Payer.

EMPIRE REALTY SECURITIES CORP.

235 Returned Nov. 1932.
Mailed for Collection.

To FLORIDA NATIONAL BANK AND TRUST CO.,
Miami, Fla.

No. 8348. Amount, $250; Interest, $250.

Know All Men By These Presents: That Empire Realty Securities Corporation, a corporation, etc., as Principal, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc., as Surety, are held and firmly bound unto Wellborn C. Phillips, hereinafter called the Obligee, his heirs, executors, administrators and or assigns in the penal sum of two hundred and fifty ($250.00) dollars, for the payment of which sum well and truly to be made, the Principal and Surety do hereby bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 17th day of May 1932.

The condition of this obligation is such that: Whereas, Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of two hundred and fifty ($250.00) dollars, payable on or before six months after date to the order of Wellborn C. Phillips, which promissory note is in words and figures as follows, to wit:

"No. 3; $250.00; Miami, Florida, May 17th, 1932.

"On or before Six (6) months after date, for value received, we promise to pay to the order of Wellborn C. Phillips two hundred fifty and no 100 dollars, payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6% per annum from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of nonpayment, and protest, and in case suit shall be brought for the collection hereof or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 6 percent per annum, payable semiannually.

"Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

"EMPIRE REALTY SECURITIES CORPORATION.
"By F. H. RAND, JR., *President*."

And whereas the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as to principal and interest, upon demand of the Obligee or the assignee of the Obligee, in the event the said note be not fully paid by the Empire Realty Securities Corporation at its maturity.

Now, if the above-described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void; else same shall remain in full force and effect.

236 A condition of this bond is that no assignments or endorsement of the above-described note shall in any way relieve the Surety from its obligation to pay *said* note in accordance with the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass to the Assignee, payee, endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

Witness the hand and seal of the Principal and Surety this day and year first above written.

[SEAL] EMPIRE REALTY SECURITIES CORPORATION,
By J. H. RAND, JR., *President, As Principal.*

Signed, sealed, and delivered in the presence of—
GLADYS DEAVO.
J. A. HARLIM.

[SEAL] NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
By E. L. SEMPLE, *Attorney in Fact, As Surety.*

Know all men by these presents: That Empire Realty Securities Corporation, a corporation, etc., as Principal, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc., as Surety, are held and firmly bound unto Wellborn C. Phillips, hereinafter called the Obligee, his heirs, executors, administrators, and/or assigns, in the penal sum of two hundred and fifty ($250.00) dollars, for the payment of which sum well and truly to be made, the Principal and Surety do hereby bind themselves, their successors, and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 17th day of May 1932.

The condition of this obligation is such that: Whereas, Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of two hundred and fifty ($250.00) dollars, payable on or before six months after date to the order of Wellborn C. Phillips, which promissory note is in words and figures as follows, to-wit:

"No. 1; $250.00; Miami, Florida, May 17th, 1932.

"On or before Six (6) months after date, for value received, we promise to pay to the order of Wellborn C. Phillips, two hundred

fifty and no/100 dollars, payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6% per annum, from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of non-payment and protest and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand
237 of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 6% percent, per annum payable semiannually.

"Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

"EMPIRE REALTY SECURITIES CORPORATION.
"By F. H. RAND, JR., *President.*"

And whereas the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as to principal and interest upon demand of the Obligee, or the assignee of the Obligee, in the event the said note be not fully paid by the Empire Realty Securities Corporation at its maturity.

Now, if the above-described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void; else same shall remain in full force and effect.

A condition of this bond is that no assignment or endorsement of the above-described note shall in any way relieve the Surety from its obligation to pay said note in accordance with the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass to the Assignee, payee, endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

Witness the hand and seal of the Principal and Surety this day and year first above written.

[SEAL] EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, JR., *President, As Principal.*

Signed, sealed, and delivered in the presence of—
GLADYS DEAVO.
J. A. HARLIM.

[SEAL] NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
By E. L. SEMPLE, *Attorney in Fact, As Surety.*

238 In Circuit Court of Leon County

[Title omitted.]

Claim Number 14 (Case No. 182–T United States Civil) of the United States

Filed May 27, 1934

Comes now the United States of America, by its undersigned attorneys, and files this claim in the above-styled cause and claims preference by reason of—

(a) The lien on those certain assets hereinafter described, now in the possession of the receiver, under the judgment hereinafter described, and

(b) Section 3466, Revised Statutes of the United States (Title 31 U. X. C. A. 191), and, so claiming, respectfully shows unto the Court, and alleges as follows:

I. On the 16th day of November, A. D. 1932, summons was duly and lawfully served on the New Jersey Fidelity & Plate Glass Insurance Company, a corporation, in scire facias proceedings in the United States District Court for the Southern District of Florida, Case No. 182–T U. S. Civil, on an estreated bail bond which had theretofore been executed by said corporation as surety in said court. Said summons was returnable to the rule day in December, A. D. 1932. Said scire facias proceedings proceeded to final judgment in favor of the claimant, the United States of America, and, on the 7th day of December, A. D. 1932, said judgment was
239 rendered by the United States District Court for the Southern District of Florida in the principal sum of Two Hundred and Fifty Dollars ($250.00), with interest at the rate of eight per cent per annum from said 7th day of December A. D. 1932, and costs in the sum of Seventeen Dollars and no cents ($17.00). Said judgment was in favor of the United States of America and against the said New Jersey Fidelity & Plate Glass Insurance Company. A certified copy of said judgment recorded in Judgment Record 2, page 426, in the records of the United States District Court for the Southern District of Florida at Tampa is hereto attached, and claimant prays that same be considered as a part of this claim.

II. On the 25th day of January, A. D. 1933, the United States Attorney for the Southern District of Florida, on behalf of this claimant, filed a written notice with the Honorable W. V. Knott, State Treasurer and Insurance Commissioner of the State of Florida, at Tallahassee, Florida, under the provisions of Sections 6302 and 6303, Compiled General Laws of Florida, 1927, and on the day of ———, A. D. 193—, the said State Treasurer and Insurance Com-

missioner duly received said notice and, in compliance with said notice and the statutes of the State of Florida, did set aside certain bonds and/or securities which had theretofore been deposited with the said State Treasurer and Insurance Commissioner by the said New Jersey Fidelity & Plate Glass Insurance Company as aforesaid, as shown by the report of the State Treasurer and Insurance Commissioner directed to his Excellency, David Sholtz, Governor of Florida, and dated July 1, 1933; that the action of said State Treasurer and Insurance Commissioner created a specific lien upon said bonds and/or securities so set aside in favor of Petitioner to the extent of the amount of Petitioner's judgment, principal, costs, and interest and was to abide the further order of the said United
240 States District Court for the Southern District of Florida, which had rendered said judgment, and the said State Treasurer and Insurance Commissioner did hold said bonds and/or securities for said purpose until same were turned over to the receiver herein, as hereinafter set forth. A copy of said notice is hereto attached, and claimant prays that same may be considered a part of this claim. Said bonds and/or securities had theretofore been deposited with said State Treasurer and Insurance Commissioner by said corporation under the provisions of Sections 6302 and 6303, Compiled General Laws of Florida, 1927.

III. Said New Jersey Fidelity & Plate Glass Insurance Company, a corporation, was a corporation organized and existing under and by virtue of the laws of the State of New Jersey and, under the provisions of the insurance laws of said state, was declared to be insolvent and was placed in liquidation at the close of business on the 28th day of May, A. D. 1932.

IV. Claimant would further show unto the Court that subsequently to the setting aside of the said bonds and/or securities by said State Treasurer and Insurance Commissioner, the United States Attorney for the Southern District of Florida applied to the United States District Court for said Southern District of Florida, which Court had rendered said judgment, for an order under the provisions of said Section 6303, Compiled General Laws of Florida, 1927, directing the said State Treasurer and Insurance Commissioner to sell the said bonds and/or securities so set aside, as aforesaid, to satisfy claimant's judgment, and that the said United States District Court, upon the presentation of said motion, issued a temporary restraining order to hold in status quo the matter of subjecting the bonds and/or
241 securities to the satisfaction of the judgment until all parties could be heard, by which the said State Treasurer and Insurance Commissioner was restrained from turning over said bonds and/or securities to the receiver herein, or otherwise disposing of same until the matter could be given mature consideration. Claimant would further show, however, that subsequently, after full argument,

said United States District Court dissolved its restraining order and left the merits of Petitioner's claim for adjudication in this Court, and said bonds and/or securities have been delivered over to the receiver herein by said State Treasurer and Insurance Commissioner, and claimant alleges that said receiver now holds said bonds and/or securities for the benefit of this claimant.

V. The dissolution of said restraining order was without prejudice to the validity of this claim and its lien against the bonds and/or securities above-described, but, on the contrary, was in recognition of a due and orderly procedure as between the two jurisdictions, and in recognition of the right of the State Court to adjudicate the matters involved without any adverse decision as to the priority of the Petitioner's lien, as herein claimed, in substantiation of which allegations a copy of said District Court's order is hereto attached, and it is prayed that same be considered a part of this claim.

VI. That, in pursuance of notice received from the receiver herein as to the filing of claims, and in pursuance to the order of the said District Court of the United States recognizing comity between the two jurisdictions, claimant seeks its remedy in this Honorable Court, but maintains and claims all rights or priority by reason of the facts above set forth as to the lien on said bonds and/or securities
242 and, by virtue of Section 3466 of the Revised Statutes of the United States and by filing its said claim, the claimant does intend to waive any rights which it may have under the laws of the State of Florida or of the United States, but expressly reserves the right to contend for any and all rights which it may have in the premises in any proper tribunal.

VII. Wherefore, claimant prays—

(1) That the receiver be immediately ordered to safely keep said bonds and/or securities until the further order of this Court.

(2) That the Court will entertain this claim and recognize the priority of said claim by virtue of the judgment, the notice to the State Treasurer and Insurance Commissioner, and the actual setting aside and holding of said bonds and/or securities to satisfy said judgment prior to the insolvency of said corporation and institution of those receivership proceedings.

(3) That the Court will recognize and adjudicate claimant's priority herein by virtue of said Section 3466, Revised Statutes, of the United States (Title 31, U. S. C. A., 191).

(4) That the Court will adjudicate the priorities as to the several claims filed herein and order the receiver to satisfy claimant's claim in such manner as will render justice herein, and to the Court, in equity and good conscience, may seem meet and proper.

(5) That the receiver herein be ordered to dispose of said bonds and/or securities heretofore set aside by the State Treasurer and Insurance Commissioner, as alleged, and to apply the

243 proceeds, or so much thereof as may be necessary, to satisfy said judgment, interests, and costs.

John W. Holland,
JOHN W. HOLLAND,
United States Attorney for the Southern District of Florida,
Wm. A. Paisley,
WILLIAM A. PAISLEY,
Assistant United States Attorney for the Southern District of Florida,
Attorneys for claimant, United States of America.

[*Duly sworn to by John W. Holland; jurat omitted in printing.*]

244 In the United States District Court in and for the Southern District of Florida

Case No. 182–T. U. S. Civil

UNITED STATES OF AMERICA
vs.
NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY

FINAL JUDGMENT

This cause coming on to be heard and it appearing to the satisfaction of the court that judgment by default has heretofore been entered in this cause against the defendant,

New Jersey Fidelity & Plate Glass Insurance Company it is now, therefore,

Ordered and adjudged that final judgment in favor of the United States be, and hereby is, entered against the said defendant so adjudged in default in the sum of ($250.00) Two Hundred and Fifty Dollars, the penal sum stipulated in the bond herein sued upon, and costs incurred in this cause, together with interest from date of judgment at the rate of 8 per centum per annum until paid, and that the United States of America do have and recover of the said defendant, and each of them, the said sums, for which the Clerk of this court is directed to issue execution herein.

Done and ordered at Tampa, Florida, this 7th day of December, A. D. 1932.

ALEXANDER AKERMAN,
United States District Judge.

245 Certified copy

UNITED STATES OF AMERICA,
Southern District of Florida, ss:

I, Edwin R. Williams, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that

the annexed and foregoing is a true and full copy of the original final judgment entered in the cause of United States of America vs. New Jersey Fidelity & Plate Glass Insurance Company, dated December 7th, 1932, case number 182–T. U. S. Civil; and that said judgment has not been satisfied as to any part thereof. Now remaining among the records of the said Court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Tampa, this 6th day of January, A. D. 1934.

EDWIN R. WILLIAMS,
Clerk.

[SEAL]

By LOUISE DYKEMAN,
Deputy Clerk.

246 United States District Court, Southern District of Florida

Case No. 182–T. U. S. Civil

UNITED STATES OF AMERICA

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY

AMENDMENT TO FINAL JUDGMENT

Upon motion of the United States attorney the fifth line of the second paragraph after the word "cause", and before the word "together", in the sixth line in the Final Judgment heretofore entered in this cause on the 7th day of December, A. D. 1932, is hereby amended to read, "herein taxed at the sum of seventeen and 00/100 ($17.00) Dollars."

Done and ordered at Tampa, Florida, this 26th day of June, A. D. 1933.

ALEXANDER AKERMAN,
United States District Judge.

Certified copy

UNITED STATES OF AMERICA,
Southern District of Florida, ss.:

I, Edwin R. Williams, clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the annexed and foregoing is a true and full copy of the original amendment to final judgment entered in the cause of United States of America vs. New Jersey Fidelity & Plate Glass Insurance
247 Company, dated June 26th, 1933, case number 182–T. U. S. Civil; and that said judgment has not been satisfied as to any part thereof.

Now remaining among the records of the said Court in my office.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the aforesaid Court at Tampa, this 6th day of January, A. D. 1934.

EDWIN R. WILLIAMS,
Clerk.

[SEAL] By LOUISE DYKEMAN,
Deputy Clerk.

In the United States District Court in and for the Southern District of Florida

No. 182–T. U. S. Civil

UNITED STATES OF AMERICA
vs.
NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY

Filed, Tampa, Fla., Jan. 26, 1933.

EDWIN R. WILLIAMS,
Clerk.
JULIAN A. BLAKE,
Deputy Clerk.

NOTICE

To: Hon. W. V. Knott, State Treasurer and Insurance Commissioner, State of Florida, Tallahassee, Florida.

Attached to this notice is certified copy of final judgment secured by the United States of America on the 7th day of December, A. D. 1932, against the New Jersey Fidelity and Plate Glass Insurance Company, which company now has on deposit with you, under the provisions of section 6302 Compiled General Laws of Florida, 1927 Edition, $75,000.00 of the State of Vermont 3½% coupon bonds. This judgment has been in force for more than thirty days and you are hereby notified that the New Jersey Fidelity and Plate Glass Insurance Company has failed to pay said judgment and same now remains unpaid. You are therefore requested to take the proper steps as provided in Section 6303 Compiled General Laws of Florida, 1927 Edition, to retain in your possession so much of said bonds deposited by said New Jersey Fidelity and Plate Glass Insur-
248 ance Company as may be necessary to cover this judgment and the costs thereof.

Dated at Jacksonville, Florida, this 25th day of January, A. D. 1933.

(Signed) W. P. HUGHES,
United States Attorney for the Southern District of Florida.

STATE OF FLORIDA,
County of Duval.

Personally appeared before me the undersigned authority, W. P. Hughes, who being duly sworn deposes and says that he is the United States Attorney for the Southern District of Florida, and that on this 25th day of January, A. D. 1933, he deposited in the United States Post Office at Jacksonville, Florida, a copy of the foregoing notice, together with a certified copy of the final judgment described in said notice, securely sealed in a government franked envelop, addressed to Honorable W. V. Knott, State Treasurer and Insurance Commissioner, Tallahassee, Florida, which is the usual and customary mailing address of the said State Treasurer and Insurance Commissioner.

(Sgd.) W. P. HUGHES.

Sworn to and subscribed before me this 25 day of January, A. D. 1933.

(Sgd.) EDITH E. HOUSE,
Notary Public, State of Florida at Large.

My Commission expires Sept. 28, 1933.

In the United States District Court for the Southern District of Florida

United States v. New Jersey Fidelity & Plate Glass Insurance Co., 182–T U. S. Civil.
United States v. New Jersey Fidelity & Plate Glass Insurance Co., 189–T U. S. Civil.
United States v. New Jersey Fidelity & Plate Glass Insurance Co., 190–T U. S. Civil.
United States v. New Jersey Fidelity & Plate Glass Insurance Co., 191–T U. S. Civil.
United States v. New Jersey Fidelity & Plate Glass Insurance Co., 192–T U. S. Civil.
United States v. New Jersey Fidelity & Plate Glass Insurance Co., 193–T U. S. Civil.
United States v. New Jersey Fidelity & Plate Glass Insurance Co., 203–T U. S. Civil.
United States v. New Jersey Fidelity & Plate Glass Insurance Co., 206–T U. S. Civil.

ORDER

This cause having been submitted upon the motion of W. V. Knott, as State Treasurer of the State of Florida, to vacate and dissolve the restraining order heretofore entered in the above styled causes on the 24th day of June, A. D. 1933, directing said State Treasurer of Florida to hold certain bonds until the further order of
9 this Court, it is, upon consideration thereof,

Ordered and adjudged that said motion be, and the same is hereby, granted, and said restraining order shall stand dissolved on November 1, 1933, until which time, however, said restraining order shall remain in effect.

The Court is of the opinion that since the rights, if any, of the United States depend upon a State statute, and since such State statute, as amended, provides for an orderly and efficient method of determining the rights of all parties in the State Courts, which said Courts have heretofore taken jurisdiction of the matters in question and are proceeding therewith under State procedure, that a proper regard for comity and orderly procedure between Courts requires that this Court remit the United States to its remedy in the State Court of Florida, as provided by the State statute upon which the United States founds its claim and from which Courts the United States has ultimate recourse to the Supreme Court of the United States, if necessary; and that this Court should not undertake in a summary proceeding to deprive the State Court of jurisdiction over the subject matter which it had already assumed under the State statute, upon which the United States relies.

Done and ordered at Jacksonville, Florida, this 30 day of October, A. D. 1933.

(Signed) LOUIE W. STRUM,
United States District Judge.

250 In Circuit Court of Leon County

[Title omitted.]

Amendment to Claim number 14 (Case No. 182-T, United States Civil) of the United States

Filed May 28, 1934

Comes now the United States of America by its undersigned attorneys and amends its proof of claim filed on the judgment rendered in the case of United States vs. New Jersey Fidelity & Plate Glass Insurance Company, No. 182-T, U. S. Civil, by adding at the conclusion of Paragraph One the following language: "The bail bond upon which said scire facias proceedings were based was estreated on the 10th day of March 1931, and became a claim due and owing by said New Jersey Fidelity & Plate Glass Insurance Company, a corporation, to the United States of America as of said date.

JOHN W. HOLLAND,
United States Attorney,
Southern District of Florida.
WILLIAM A. PAISLEY,
Assistant United States Attorney,
Southern District of Florida.

[*Duly sworn to by John W. Holland; jurat omitted in printing.*]

251 In Circuit Court of Leon County

Recitation of claims

On May 27, 1934, Claim Number 15 of the United States (Case No. 189–T, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said claim being a judgment, dated January 9, 1933, in the sum of $500.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim Number 16 of the United States (Case No. 190–T, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated January 9, 1933, in the sum of $500.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim Number 17 of the United States (Case No. 191–T, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said claim being a judgment, dated January 9, 1933, in the sum of $300.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim Number 18 of the United States (Case No. 192–T, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a
252 judgment, dated January 9, 1933, in the sum of $500.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 19 of the United States (Case No. 193–T, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said claim being a judgment, dated January 9, 1933, in the sum of $500.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 20 of the United States (Case No. 203–T, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said claim being a judgment, dated March 31, 1933, in the sum of $500.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 21 of the United States (Case No. 206–T, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said claim being a judgment, dated April 18, 1933, in the sum of $300.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 22 of the United States (Case no. 595–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated February 14, 1933, in the sum of $3,000.00, with costs taxed in the sum of $19.00.

On May 27, 1934, Claim number 23 of the United States (Case no. 628–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated September 15, 1932, in the sum of $17.00 dollars.

253 On May 27, 1934, Claim number 24 of the United States (Case no. 630–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated January 3, 1933, in the sum of $1,000.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 25 of the United States (Case No. 631–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated September 15, 1932, in the sum of $17.00.

On May 27, 1934, Claim number 26 of the United States (Case no. 632–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated January 3, 1933, in the sum of $1,000.00 with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 27 of the United States (Case No. 636–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated January 3, 1933, in the sum of $1,000.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 28 of the United States (Case No. 667–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said claim being a judgment, dated January 23, 1933, in the sum of $50.00.

254 On May 27, 1934, Claim number 29 of the United States (Case No. 668–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated September 26, 1932, in the sum of $500.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 30 of the United States (Case No. 677–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated September 26, 1932, in the sum of $100.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 31 of the United States (Case No. 677–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated September 26, 1932, in the sum of $250.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 32 of the United States (Case No. 723–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated February 15, 1933, in the sum of $1,500.00, with costs taxed in the sum of $17.00.

On May 27, 1934, Claim number 33 of the United States (Case No. 735–M, United States Civil) was filed against the New Jersey Fidelity and Plate Glass Insurance Company, the said Claim being a judgment, dated February 14, 1933, in the sum of $2,000.00, with costs taxed in the sum of $17.00.

255 In Circuit Court of Leon County

Proof of publication of receiver's notice to creditors filed Aug. 17, 1933

Notice is hereby given that on the 17th day of May, A. D. 1933, the undersigned was duly appointed by decree of the Circuit Court of the Second Judicial Circuit of Florida as Receiver for New Jersey Fidelity & Plate Glass Insurance Company, and all Florida creditors who may have claims against said Company are hereby notified to present said claims to the undersigned as such Receiver at Tallahassee, Florida, and to make legal proof thereof, on or before one year from the 17th day of May, A. D. 1933, or such claim will be forever barred.

This the 7th day of June, A. D. 1933.

D. M. LOWRY,
Receiver for New Jersey Fidelity & Plate Glass Insurance Company, Tallahassee, Florida.

June 8, 15, 22, 29; July 6, 13, 20, 27; Aug. 3—1314-C.

STATE OF FLORIDA,
County of Leon, ss:

John M. Tapers, being duly sworn on oath, saith: That he is the Manager of The Daily Democrat, a newspaper published at Tallahassee, in said county and state, and that advertisement of Receiver's Notice To Creditors—N. J. Fidelity & Plate Glass Ins. Co., a copy whereof is hereto attached, was published in said newspaper once a week for nine (9) consecutive weeks, to wit: Beginning with the issue of June 8, 1933; the other issues being June 15, 22, 29, July 6, 13, 20, 27, and ending with the issue of August 3, 1933; That said newspaper had been regularly and continuously published at least once a week for a period of more than one year at and prior to the date of the first insertion or the aforementioned advertisement, and which said newspaper was duly entered as second-class mailing matter at the post office in Tallahassee, Leon County, Florida, more than one year next preceding the first insertion of said advertisement or publication.

Witness my hand this 4th day of August, A. D. 1933.

JOHN M. TAPERS.

256 Sworn to and subscribed to before me this 4th day of August 1933.

Witness my hand and official seal.

[SEAL] HAZEL C. MYERS (HAZEL CRUTCHER).

My Commission Expires Aug. 30, 1935.

257 STATE OF FLORIDA,
County of Leon:

Before me this day came D. M. Lowry, who being by me first duly sworn, states on oath that he as Receiver of New Jersey Fidelity

& Plate Glass Insurance Company, did on the 7th day of September A. D. 1933, deposit in the United States Post Office at Tallahassee, Florida, in an envelope addressed to each of the following parties, at the address shown opposite the name of each, a copy of the attached notification; that said envelope so deposited and addressed had placed thereon sufficient postage to insure its delivery.

London Operating Company, % Stanley C. Myers, Miami.

Jay-Thorpe, Inc., % Roland W. Granat, Seybold Bldg., Miami.

T. A. McNicholas, Spec. Ass't Dept. Comm'r. of Ins., 31 Clinton St., Newark, N. J.

W. V. Knott, State Treasurer, Tallahassee, Florida.

This the 7th day of September, A. D. 1933.

D. M. LOWRY.

Sworn to and subscribed before me this 7th day of September, A. D. 1933.

[SEAL] KATHERINE HOVERMALE,
Notary Public, State of Florida, at Large.

My Commission Expires 6/21/37.

TALLAHASSEE, FLORIDA,
September 6th, 1933.

Re The London Operating Company vs. New Jersey Fidelity & Plate Glass Insurance Company, and W. V. Knott, as Treasurer of the State of Florida

To All Parties In Interest In the Above Styled Cause:

You will please take notice that the undersigned, as Re-
258 ceiver, has filed a petition with Honorable J. B. Johnson, one of the Judges of the Circuit Court, in and for Leon County, Florida, for authorization to pay a portion of the attorneys' fees heretofore earned in said receivership, to wit, the sum of Five Hundred (500.00) Dollars, and that said petition for authorization to pay the said attorneys' fee will be brought on for hearing before the Honorable J. B. Johnson, one of the Judges of the Circuit Court aforesaid, at his Chambers in the Court House at Tallahassee, at ten o'clock A. M., on Saturday, September 16th, 1933, or as soon thereafter as counsel can be heard.

D. M. LOWRY,
Receiver for New Jersey Fiedlity & Plate Glass Insurance Company, Tallahassee, Florida.

259 In Circuit Court of Leon County

[Title omitted.]

Application of Herbert U. Feibelman, Esq., for compensation

Filed Oct. 16, 1933

Comes now Herbert U. Feibelman, and respectfully shows unto the Court that on, to wit, December 14, 1932, the Honorable William H. Kelly, Commissioner of Banking and Insurance of the State of
260 New Jersey, did employ this petitioner for the purpose of bringing about such proceedings through existing law and through the enactment of such new legislation as might be required, the proportional and equitable distribution of funds derived from the sale of securities then amounting to $71,000.00, on deposit with the Honorable Wm. V. Knott, State Treasurer and ex-officio Insurance Commissioner of the State of Florida; that these bonds had been deposited under and by virtue of Section 4339 of the Revised General Laws of Florida, 1920, and Acts amendatory thereof; that no specific provision obtained under Section 4340 of the Revised General Laws of Florida, 1920, whereby the securities so deposited with the state treasurer should be sold and the proceeds distributed equitably and proportionally, in the event a foreign surety company should become insolvent or be placed in liquidation; that under and by virtue of that certain decision rendered by the Supreme Court of Florida in the case of Board of Public Instruction of Dade County vs. Knott, 143 So. 135, this attorney, acting for and in behalf of the said William H. Kelly as Commissioner of Banking and Insurance of the State of New Jersey, did on, to wit, December 19, 1932, file suit in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, Cause No. 3111, and move for a temporary restraining order, restraining the further distribution and sale of the securities so deposited.
261 Petitioner further shows that a temporary injunction was accordingly entered, and the bill of complaint and injunctive order so entered was amended and modified to permit the sale of sufficient securities to satisfy certain judgments of less than $4,500.00.

Petitioner further shows that the effect of these proceedings was to prevent the sale of the securities which had been deposited with the State Treasurer as aforesaid, and to insure the equitable and proportional distribution of the funds derived from the sale of these securities; that had not these proceedings been instituted, the said bonds would have been sold to satisfy only a part of the Florida obligees under bonds signed by said surety company; that the total amount of bonds for which the said surety company had become bound in Florida, was more than $300,000.00, and therefore the effect of the filing of said bill was to insure the proportional distribution of the proceeds of the sale of $66,500.00 in bonds for the general

benefit of all Florida obligees; petitioner further shows that during the month of April and at the instance and by authority of the said William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, and for the sole purpose of insuring the fair and equitable distribution of the proceeds of the sale of the said securities on deposit as aforesaid, he went to Tallahassee and
262 there collaborated with the Attorney General of the State of Florida for the purpose of drafting needful legislation to secure such equitable and proportional distribution; that existing law, as pronounced by the Supreme Court of the State of Florida in the case of Board of Public Instruction vs. W. V. Knott, supra, was not clearly or definitely set forth, and no clear provision was made for such an exigency as existed by reason of the insolvency and liquidation of the New Jersey Fidelity and Plate Glass Insurance Company; that this petitioner, in collaboration with the Attorney General of the State of Florida, drafted that certain law known as Senate Bill # 288, which, through the efforts of the Attorney General and this attorney, was enacted into law, and is now a part of the statutes of the State of Florida. The title of the said Act is as follows:

"An act to amend Section 4340 of the Revised General Statutes of Florida of 1920, the same being Section 6303 of the Compiled General Laws of Florida, 1927, Relating to Final Judgments Against Surety Companies, and Providing for the Disposition of Florida Assets of Such Surety Companies and the Securities deposited with the State Treasurer under Section 4339 of the Revised General Statutes of Florida of 1920, in Event of Insolvency or liquidation of said Companies."

Petitioner further shows that to protect Florida obligees of bonds and recognizances of the New Jersey Fidelity and Plate Glass Insurance Company, this attorney did confer with the Chairman of the House Committee on Insurance and with other members of
263 the legislature in a legal, proper, and legitimate manner, presenting to them the necessity for the passage of the law for the protection of the residents and citizens of Florida who had accepted obligations of the said surety company and who were entitled to an equitable and proportional distribution of the securities heretofore deposited by the foreign surety company aforesaid.

The petitioner further shows that this attorney, located in Miami, Florida, was employed by reason of the fact that most, if not all, of the Florida obligations of the New Jersey Fidelity and Plate Glass Insurance Company had been executed or created in Dade County, Florida; that it was necessary that a Dade County, Florida, attorney be appointed because of his strategic location to deal with these matters.

Petitioner further shows that the effect of the injunction which he procured was actually to stay one suit which had been filed and sev-

eral suits which had been threatened and were in contemplation, and this injunction protected and secured those for whom said securities had been deposited until the said Senate Bill #288, prepared by this attorney, had been enacted into law, thereby guaranteeing the equitable and proportional distribution of bonds to which the Florida obligees were entitled.

Petitioner further shows that on, to wit, the 17th day of January, A. D. 1933, by directions of the said William H. Kelley, Commissioner of Banking and Insurance of the State of New Jersey, and in pursuance of the policy to conserve the Florida assets of the New Jersey Fidelity and Plate Glass Insurance Company for the
264 proportional distribution of the proceeds thereof amongst Florida creditors, this attorney entered his appearance in that certain suit which had been filed in the Circuit Court of the 13th Judicial Circuit, Hillsboro County, Florida, by the Hernando State Bank to recover the sum of Two Thousand and No/100 Dollars ($2,000.00) on bonds alleged to have been executed by the New Jersey Fidelity and Plate Glass Insurance Company, and this attorney did resist the said action until the said Senate Bill #288 had been enacted into law, an injunction obtained in the consolidated cases and a copy of the injunction was served by this attorney upon the plaintiff, and the cause successfully stayed. Petitioner shows that this action redounded to the general benefit of Florida obligees of the New Jersey Fidelity and Plate Glass Insurance Company.

Petitioner further shows that promptly after the said Senate Bill #288 had been enacted into law, the London Operating Company, obligee under a bond of the New Jersey Fidelity and Plate Glass Insurance Company, did file a bill of complaint in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, Cause #3171, to invoke the powers, prerogatives, and protection of the said Senate Bill #288, and by virtue of this law a receiver was appointed and a further injunction was entered, and this receiver is now administering the said securities so deposited with the State Treasurer and ex officion insurance commissioner.

Petitioner further shows that on, to wit, May 25, 1933, the Hon. E. C. Love, Judge of this Court, did, on motion of the Hon. William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, enter an order consolidating the two causes, a copy of which order is hereto attached, made a part of, and marked as "Exhibit A."

265 Petitioner further shows that said Senate Bill #288 provides, amongst other things, that this Honorable Court shall direct a sale of the securities of the New Jersey Fidelity and Plate Glass Insurance Company, and from the proceeds thereof direct the payment of all costs and expenses of this litigation, including reasonable attorney's fees incurred in connection with said consolidated proceedings; petitioner further shows that the effect of the first of said suits is to bring the securities of the New Jersey Fidelity and Plate Glass In-

surance Company into the custody of this Court, thereby creating a trust fund and granting to all persons the benefits of the injunction obtained on, to wit, December 19, 1932; that both of said causes are now one and the same, and this petitioner is entitled to the compensation contemplated by the said Senate Bill #288.

Petitioner further shows that all of the efforts of this petitioner as attorney for the said William H. Kelly as Commissioner of Banking and Insurance of the State of New Jersey, as hereinbefore particularly set forth, have been for the benefit of Florida obligees and obligations in favor of citizens and residents of the State of Florida, and that all expenses for this purpose should be imposed upon the Florida fund, which has been protected.

Petitioner further shows that counsel who brought the second suit, Cause No. 3171, in behalf of the London Operating Company, has since the date of the appointment of the receiver been appointed as his counsel and now represents him and will be compensated for representing the said receiver.

Petitioner submits herewith as a part hereof a detailed and
266 completely itemized statement of the services rendered by this attorney, showing the nature and extent thereof, and after careful consideration this attorney estimates that these services consumed not less than two (2) weeks of his time, and not more than twenty-one (21) days all together.

Wherefore, petitioner prays that the Court will grant to this petitioner a fee of not less than $3,500.00 and the sum of $132.28 for expenses incurred in and about the services hereinbefore set forth, a more detailed statement of such expenses being hereto attached, made a part and marked "Exhibit B." Petitioner attaches hereto, make a part hereof, and marks "Exhibit C" the affidavits of James E. Calkins and John C. Cooper, Jr., members of the Bar, testifying to the reasonableness of the fee prayed for.

(Signed) HERBERT U. FEIBELMAN.

STATE OF FLORIDA,
County of Dade, ss:

Before me, the undersigned authority, personally appeared Herbert U. Feibelman, who, upon being first duly sworn, deposes and says that the allegations of the foregoing petition are true.

(Signed) HERBERT U. FEIBELMAN.

Sworn to and subscribed before me at Miami, Dade County, Florida, this the 26 day of September, A. D. 1933.

[SEAL] (Signed) MARGARET TRUSSELL,
Notary Public, State of Florida.

My Commission Expires Oct. 10, 1935.

267 *Exhibit A*

In the Circuit Court of the 2nd Judicial Circuit in and for Leon County, Florida

In Chancery

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE OF the State of New Jersey, complainant

vs.

W. V. KNOTT, AS STATE TREASURER AND EX-OFFICIO INSURANCE COMMISSIONER of the State of Florida; and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the laws of the State of New Jersey, defendants

ORDER CONSOLIDATING CAUSES

This cause coming on to be heard upon the motion of the complainant to consolidate the instant cause with that certain cause entitled the London Operating Company, a Florida corporation, complainant, versus New Jersey Plate Glass & Fidelity Insurance Company, a New Jersey Corporation, and W. V. Knott, as treasurer of the State of Florida, Case No. 3171, and it appearing unto the court that substantially the same relief is sought in both causes, and that by the consolidation of the causes needless expense and delay and the multiplicity of suits will be avoided, and the Court being fully advised in the premises, it is

Ordered that the said causes, be and the same are hereby,
268 consolidated into one and the same cause, and all the orders heretofore made in the case of London Operating Company versus New Jersey Plate Glass & Fidelity Insurance Company et al. be, and the same are hereby, adopted, ratified, and confirmed as the orders in that certain cause entitled William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, versus W. V. Knott, State Treasurer and ex-officio Insurance Commissioner of the State of Florida, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation organized under the laws of the State of New Jersey, and the two causes will proceed as one.

Done and ordered at Quincy, Florida, this 25th day of May, A. D 1933.

E. C. LOVE.
Circuit Judge.

269 KELLY

vs.

KNOTT

Exhibit B

STATEMENT OF EXPENSES

Telegrams	$7.48
Long Distance calls	16.90
Clerk	11.50
Trips to Tallahassee	96.40
Total	132.28

270 STATEMENT OF SERVICES RENDERED BY HERBERT U. FEIBELMAN, ESQ., IN THE MATTER OF NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY CASES

1932

Dec. 14—Received letter from John Milton, Esq., attorney for Wm. H. Kelly, N. J. Insurance Commissioner.

Dec. 16—Received telegram from John Milton advising additional orders for sale of bonds served on the Fla. Insurance Commissioner, and advising conference with J. K. Ricketts, representative in Florida for the N. J. Fidelity and Plate Glass Ins. Co.

Dec. 16—Wired J. K. Ricketts to call.

Dec. 16—Wired Milton would see Rickets and proceed.

Dec. 16—Interviewed Ricketts at length, and wired Milton pleadings were being prepared, preparatory to obtaining injunction.

Dec. 16—Received telegram from N. J. Insurance Commissioner.

Dec. 16—Spoke by long distance to Tallahassee twice relative to proposed legislation.

Dec. 16—

Dec. 17—Devoted those two days to the drafting of a bill of Complaint, Notice, and the Order granting temporary injunction.

Dec. 18—Left for Tallahassee by Florida East Coast Railway.

Dec. 19—Arrived in Tallahassee and conferred at length with Attorney General and State Ins. Comm. Finding that additional notices of judgments had been received, I prepared Motion to amend bill and Order permitting amendment, which would except from injunction sufficient bonds to satisfy judgments covered by these notices.

1932

Dec. 19—Also went with Attorney General to Quincy where bill was filed, motion made to amend bill, and order presented granting leave to amend, and the application made for injunction before Judge Love. Injunction granted.

Dec. 19—Returned to Tallahassee and took train for Miami shortly after noon.

Dec. 20—Arrived in Miami. Reported to John Milton as attorney for Kelly, N. J. Inc. Comm., as Complainant, and submitted injunction bond for $200.00, requesting that it be sent to Circuit Court Clerk at Tallahassee, properly executed, with surety.

Dec. 20—Received copy of letter from Fla. Ins. Comm. to the U. S. Dist. Attorney, Southern Dist. of Fla., acknowledging receipt of copies of orders against the N. J. Fidelity and Plate Glass Insurance Co. bonds.

*Dec. 24—Received letter from Milton stating that bond submitted to Comm. for execution by the N. J. Fidelity and Plate Glass Ins. Co. (Title to Company's property does not pass to Commissioner, and bond would be signed by company itself.)

271 Dec. 29—Received letter from Attorney General enclosing copies of Motion to amend bill, and Orders granting Motion.

Dec. 29—Received copy of lengthy letter from Fla. Ins. Comm. to Akerman & Gray, attorneys, Orlando, Florida, reporting sale and prospective sale of bonds on deposit belonging to the N. J. Fidelity and Plate Glass Ins. Co., and other matters involved in this litigation.

Dec. 30—Received letter from John Milton acknowledging Court Order.

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Jan. 2—Received copy of letter from the Fla. Ins. Comm. to Clark W. Jennings, enclosing check for $1,630.04.

Jan. 6—Received copy of letter from Fla. Ins. Comm. to Special Assistant Deputy Commissioner of N. J., enclosing Summons in the case of Hernando State Bank, etc., vs. N. J. Fidelity and Plate Glass Ins. Co.

Jan. 7—Received letter that bond was being filed, from the Aetna Casualty & Surety Co.

Jan. 8—Received letter from Clerk of the Circuit Court at Tallahassee that injunction bond had been received from the Aetna Casualty & Surety Co.

Jan. 8—Received copy of letter from Fla. State Ins. Comm. to McNicholas, Special Assistant Deputy Ins. Comm. of N. J., advising receipt of satisfaction of judgment in Munson case, Palm Beach County, Fla.

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* Dec. 21—Wrote Kelley enclosing copy of injunction.

1933

Jan. 8—Received copy of letter from Fla. Ins. Comm. to Sheriff Dade County, relative to certain executions against N. J. Fidelity and Plate Glass Ins. Co.

Jan. 8—Received copy of letter from Fla. State Ins. Comm. to Akerman & Gray, attorneys, Orlando.

STEPS TAKEN IN THE DEFENSE OF SUIT OF HERNANDO STATE BANK VS. N. J. FIDELITY & PLATE GLASS INS. CO.

1933

Jan. 6—Forwarded summons to John Milton in the matter of Hernando State Bank vs. N. J. Fidelity & Plate Glass Ins. Co.

Jan. 12—Received letter from John Milton acknowledging receipt of Summons in case of Hernando State Bank vs. N. J. Fidelity & Plate Glass Ins. Co.

Jan. 14—Received letter from Milton advising that Ricketts would confer relative to Hernando State Bank vs. N. J. Fidelity & Plate Glass Ins. Co.

Jan. 17—Employed by Wm. H. Kelly, N. J. State Ins. Comm., to defend suit of Hernando State Bank vs. N. J. Fidelity & P. G. Ins. Co.

Jan. 17—Wrote Sutton, Tillman & Reeves, attorneys for Plaintiff, for copy of Declaration.

272 Jan. 26—Received copy of Declaration, and Forwarded copy of Declaration to Milton.

Feb. 2—Received acknowledgment from Milton.

Feb. 6—Wired Clerk Circuit Court Tampa enter my appearance.

Feb. 6—Wrote Clerk letter confirming this request.

Feb. 9—Received letter from Milton giving facts pertinent to defense of action.

Feb. 16—Acknowledged letter and wrote for additional information.

Feb. 18—Received letter from Plaintiff's attorney, urging speedy trial.

Feb. 21—Wrote Milton reporting recent decision of Florida Supreme Court and advising course of action.

Mar. 1—Wrote Plaintiff's attorney and mailed copy of demurrer.

Mar. 6—Received letter from Plaintiff's attorney.

Mar. 6—Wrote Clerk Circuit Court.

Mar. 7—Employed Mabry, Reaves & White to attend hearing on Defendant's Demurrer.

Mar. 8—Received wire from White accepting employment.

Mar. 11—Received letter from Mabry, Reaves & White relative to court's action on Demurrer.

Mar. 15—Wrote Plaintiff's attorney for copy of Amended Declaration.

Mar. 16—Received letter from Plaintiff's attorney with copy of Plaintiff's Amended Declaration, and acknowledged receipt.

1933

Mar. 17—Received from Mabry, Reaves & White copy of Amendment to Declaration.
Apr. 1—Received wire from Mabry, Reaves & White.
Apr. 3—Acknowledged receipt of wire from Mabry, Reaves & White.
Apr. 4—Received letter from Plaintiff's attorney.
Apr. 5—Answered letter from Plaintiff's attorney.
May 2—Wrote Clerk Circuit Court.
May 3—Received reply from Clerk.
May 17—Received interrogatories to be answered by client and forwarded copy to Milton.
May 17—Acknowledged receipt of interrogatories served on Defendant.
May 17—Wrote Clerk of Court.
273 May 19—Received letter from Clerk advising case set for trial June 12, 1933.
May 19—Received letter from Plaintiff's attorney.
May 19—Received letter from Milton relative to answering interrogatories.
May 22—Reported to Milton.
May 24—Mabry, Reaves, Carlton & White reported setting of case.
May 26—Reported to Milton proceedings in Tallahassee resulting in consolidation of suits.
May 27—Received letter from Milton.
May 27—Mailed copy of injunction to Sutton, Tillman & Reeves, counsel for Hernando State Bank.
May 29—Wrote Mabry, Reaves, Carlton & White advising them of injunction.
May 31—Wrote Milton advising action to be taken in case of Hernando State Bank.
Jun. 1—Received letter from Sutton, Tillman & Reeves.
Jun. 1—Answered letter from Sutton, Tillman & Reeves.
Jun. 8—Received letter from Mabry, Reaves, Carlton & White.
Jun. 8—Forwarded copy of injunction to Sutton, Tillman & Reeves
Jun. 13—Received letter from Sutton, Tillman & Reeves.
Jan. 10—Received letter from Lloyd C. Hooks, Miami attorney, enclosing notice to be signed. Acknowledged receipt of Hooks' letter.
Jan. 11—Forwarded Notice to Attorney General of Motion to vacate certain judgments.
Jan. 15—Received letter from Attorney General.
Jan. 16—Sent Fla. State Ins. Comm. copy of injunction.
Jan. 18—Received copies of letters of Fla. State Ins. Comm. to John C. Sullivan, Miami Attorney, and Barnett National Bank, and acknowledged receipt.
Jan. 19—Received letter from Attorney General acknowledging receipt of copies of injunctive order.

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274 Jan. 25—Received letter from Milton inquiring as to appointment of Resident Agent.
Jan. 23—Received letter from Fla. State Ins. Comm. enclosing two letters, requested of him.
Jan. 25—Received letter from Fla. State Ins. Comm. asking about injunction bond, and reply made.
Jan. 25—Wrote Fla. Ins. Comm. injunction bond was filed Jan. 6, 1933.
Jan. 28—Wrote Attorney General.
Jan. 28—Wrote Milton advising that authority of Florida agent be revoked.
Jan. 28—Received from Fla. Ins. Comm. copy of his letter to Copeland & Therrell.
Feb. 2—Wrote Fla. Ins. Comm. forwarding copy of judgments, and forwarded copies to Milton, and the Attorney General.
Feb. 2—Received copy of letter from Fla. Ins. Comm. to Clerk Circuit Court, W. P. B., relative to satisfaction of judgment.
Feb. 2—Reported to Milton conference with Ricketts relative to draft of proposed bill.
Feb. 2—Wrote Milton relative to copies of letters from State Treasurer and liabilities on bonds.
Feb. 7—Received letter from Attorney General and answered the same.
Feb. 10—Received acknowledgment from Fla. State Ins. Comm.
Feb. 10—Received authority and directions to prepare bill to provide for disposition of securities by letter from John Milton.
Feb. 10—Wrote Attorney General relative to draft of bill.
Feb. 10—Wrote attorney General relative to employment in drafting statute.
Feb. 16—Received letter from Attorney General on subject.
Feb. 16—Proceeded to study similar statutes in other jurisdictions—if they existed. (One half day's time consumed.)
Feb. 18—Received copy of letter of Fla. Ins. Comm. to U. S. Dist. Attorney.
Feb. 24—Wrote Milton on subject.
Mar. 6—Received copy of Answer of Fla. State Ins. Comm. through attorney General.
Apr. 3—Wired Attorney General relative to pending legislation.
Apr. ——Wired Attorney General relative to pending legislation.
Apr. 4—Submitted suggested form of bill to Attorney for N. J. Fidelity & Plate Glass Ins. Co.
Apr. 4—Received wire from Attorney General.
Apr. 7—Received letter from Milton acknowledging receipt of the draft of the bill.

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Apr. 8—Received wire from Attorney General.
Apr. 8—Wired Attorney General.
275 Apr. 10—Wired Dr. J. H. Mann, Chairman of the Legislative Insurance Committee.
Apr. 18—Conferred with Attorney General relative to proposed legislation in Tallahassee.
Apr. 22—Wrote to Senator Watson relative to proposed legislation.
Apr. 27—Received wire from Attorney General that Bill passed the Senate.
May 3—Wrote Attorney General relative to proposed change in Bill.
May 3—Wired Hon. T. S. Ferguson to inquire about progress of Bill in House.
May 3—Received wire from Ferguson that Bill passed House.
May 5—Received letter from Ferguson on passage of Bill.
May 10—Received letter in reply from Watson.
May 11—Received letter from Attorney General.
May 16—Wrote to Attorney General.
May 19—Received wire from Attorney General advising the appointment of Lowry as Receiver.
May 20—Wired Judge Love for appointment to hear motion to consolidate cases.
May 20—Served notice on all parties of motion to consolidate.
May 20—Wired Attorney General.
May 20—Received wire from Judge Love.
May 20—Received wire from Attorney General.
May 20—Received letter from Attorney General advising Bill passed both Houses.
May 23—Wired Claude Pepper, Attorney for London Operating Co., etc.
May 23—Spoke by long distance to Pepper in Tallahassee.
May 23—Received wire from Pepper.
May 24—Went to Tallahassee by F. E. C. Railway.
May 25—Arrived Tallahassee. Conferred with Attorney General and went to Quincy and presented Motion to consolidate cases. Procured Order of consolidation after contested hearing. Returned to Tallahassee, conferred with Chairman of Insurance Committees of House and Senate.
May 30—Forwarded copy of Act (approved May 10, 1933) to counsel for N. J. Ins. Comm.
June 4—Received letter from Milton.

Held numerous conferences with Mr. Ricketts from time to time throughout the period heretofore described, totaling not less than a day and a half.

276 *Exhibit C*

STATE OF FLORIDA,
County of Dade, ss:

Before me, the undersigned authority, personally appeared James E. Calkins, who, being by me first duly sworn, deposes and says: That he is a member of the Bar of the Supreme Court of Florida and familiar with the rates of charges of attorneys; that he is familiar with the standing and ability of Herbert U. Feibelman, Esq., and that in his judgment the fee claimed in the foregoing petition is reasonable.

(Signed) JAMES E. CALKINS.

Sworn to and subscribed before me at Miami, Dade County, Florida, this the 26 day of September, A. D. 1933.

[SEAL] (Signed) YVONNE L. THOMAS.
Notary Public, State of Florida.

Notary Public, State of Florida at Large.
My Commission expires June 30, 1935.

STATE OF FLORIDA,
County of Duval, ss:

Before me, the undersigned authority, personally appeared John C. Cooper, Jr., who, being by me first duly sworn, deposes and says: That he is a member of the Bar of the Supreme Court of Florida and familiar with the rates of charges of attorneys; that he is familiar with the standing and ability of Herbert U. Feibelman, Esq., and that in his judgment the fee claimed in the foregoing Petition is reasonable.

(Signed) JOHN C. COOPER, Jr.,

Sworn to and subscribed before me at Jacksonville, Duval County, Florida, this the 29 day of September, A. D. 1933.

[SEAL] (Signed) STELLA MILLER,
Notary Public, State of Florida.

My commission expires Aug. 16, 1935.

277 In Circuit Court of Leon County

[Title omitted.]

Answer of receiver

Filed Nov. 14, 1933

Comes now D. M. Lowry, Receiver in the State of Florida for New Jersey Fidelity & Plate Glass Insurance Company, and for answer to the petition or application for compensation filed in said cause on behalf of Herbert U. Feibelman says:

278 1. That he is without knowledge of the matters and things therein set forth and alleged, and he prays that the petitioner be required to make full and complete proof thereof.

2. The said Receiver denies that the sum of $3,500.00 is a reasonable fee for the services alleged to have been rendered by the petitioner, but says that the fee sought is exorbitant, according to his information and belief.

3. The Receiver further suggests to the Court that the services alleged to have been rendered by the petitioner were rendered prior to the passage of Senate Bill 288, of the 1933 session of the Legislature of Florida, prior to the passage of which said act the funds in the hands of the State Treasurer were liable only for the payment of claims arising out of surety bonds or surety contracts; that the claim of petitioner arose by reason of services alleged to have been performed prior to the passage of any law authorizing any portion of this fund to be used for administrative purposes in administering the fund. The Receiver, therefore, submits to this Court the question of whether or not the fund arising from the securities deposited with the State Treasurer is applicable to the payment of the claim of petitioner and if the Court should determine that it might be applicable, whether or not it is the duty of the Receiver to pay claims arising out of surety contracts and surety bonds before applying any portion thereof to the payment of petitioner's claim, and whether or not, if petitioner is entitled to collect for the services, the Receiver should be required to pay same only in the event there is a surplus left in his hands after the payment of surety bonds and surety contracts.

279 By reason of the matters and things hereinabove set forth, the Receiver disapproves the claim and will not pay same except upon the order of this Court, all of which the Receiver respectfully submits to the Court.

D. M. LOWRY, *Receiver.*

280 In Circuit Court of Leon County

[Title omitted.]

Order denying petition for compensation

Filed Nov. 14, 1933

This cause came on to be heard upon the petition of Herbert U. Feibelman for compensation and reimbursement upon the sworn petition of petitioner, affidavits of attorneys as to the reasonableness of the compensation prayed for and the records of the consolidated suits as intitled above, and same was argued by counsel for the respective parties, and the Court having considered the matter and being advised doth find:

First. That the petitioner, Herbert U. Feibelman, was employed by Honorable William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey.

281 Second. This Court holds that the employment of petitioner by the Commissioner of Banking and Insurance of the State

of New Jersey was not for the conservation of the securities, trust fund, in the hands of the State Treasurer of the State of Florida; that such securities, trust fund, were already conserved for the benefit of Florida claimants, and were to be administered and paid out under the provisions of then existing law; that petitioner should be compensated out of the general estate of the New Jersey Fidelity and Plate Glass Insurance Company, or, out of any surplus in the trust fund after payment of Florida claims and the expenses of the Florida receivership.

Third. That the Court considers the compensation asked for to be exhorbitant. Therefore-

It is ordered, adjudged, and decreed that said petition be, and same is hereby, denied as to payment out of the trust funds in the hands of the Florida receiver until all Florida claims and the expense of the Florida receivership has been paid.

Ordered, adjudged, and decreed at Chambers, Tallahassee, Florida, this November 14th, 1933.

J. B. JOHNSON,
Judge.

282 In Circuit Court of Leon County

[Title omitted.]

Petition of William H. Kelly

Filed Dec. 18, 1933

Comes William H. Kelly, Commissioner of banking and insurance of the State of New Jersey, and respectfully shows unto the court that in pursuance of his duties as commissioner of banking and insurance of the State of New Jersey he did, on or about December 16, 1932, employ Herbert U. Feibelman, Esq., attorney in
283 Miami, Florida, to file the Bill of Complaint which was filed in this cause December 19, 1932, and to perform the services for the primary benefit of Florida obligees under bonds, of which the New Jersey Fidelity & Plate Glass Insurance Company was the surety.

That the nature and extent and value of the services of the said Herbert U. Feibelman are more particularly delineated in his application, filed in this cause on October 16, 1933, the allegations of which, together with the supporting affidavits of F. M. Hudson and James E. Calkins, are hereby adopted by this petitioner as part of this petition, the same as if such application were set forth herein.

Petitioner further shows that the primary purpose of and the unmistakable benefit derived from said services were in behalf of the Florida obligees, and that benefit conferred upon the trust fund which was brought into this court by the filing of the said Bill of Complaint on December 19, 1932, the issuance of the injunctive order predicated thereon, and the consolidation of Cause #3111 with Cause #3171 in this court.

Petitioner further alleges that the services of the said attorney disclosed and brought to light and protected a substantial trust fund and insured its proportional distribution amongst those entitled to participate in an equitable distribution of the proceeds of the same; that until Senate Bill #288 was enacted and the Bill of Complaint was subject to sale for the preferential payment of the claims of approximately $75,000 in bonds on deposit with the State Treasurer, was subject to sale for the preferencial payment of the claims of diligent creditors, to the loss and detriment of a majority of the Florida creditors of the New Jersey Fidelity & Plate Glass Insurance Company, and the filing of said bill, the entry of said injunctive order,
284 and the consolidation of the original cause with the subsequent suit filed under Senate Bill #288, brought about an equitable and proportional distribution of the said trust fund, and for the services of said attorney in connection with such distribution this petitioner is entitled to reasonable allowance and to reimbursement for the monies which the said attorney expended in the prosecution of said cause, a more particular delineation of such expenditures being contained in the petition of said Herbert U. Feibelman, filed October 16, 1933, which statement is hereby adopted and made a part of this petition.

Wherefore, this petitioner prays that the court will, after notice to all parties, enter an order allowing this petitioner $3,500.00 compensation for his said attorney, Herbert U. Feibelman, Esq., and $132.28 in reimbursement for the monies the said attorney expended.

WILLIAM H. KELLY.

[*Duly sworn to by Wm. H. Kelly, jurat omitted in printing.*]

285 In Circuit Court of Leon County

[Title omitted.]

Answer of receiver

Filed Dec. 18, 1933

Comes now D. M. Lowry, Receiver in the State of Florida for New Jersey Fidelity & Plate Glass Insurance Company, and for answer to the petition of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, says:

1. That he is without knowledge of the matters and things
286 therein set forth and alleged, and he prays that the petitioner be required to make full and complete proof thereof.

2. The said Receiver denies that the sum of $3,500.00 is reasonable fee for the services alleged to have been rendered by Herbert U. Feibelman, Esq., but says that the fee sought is exorbitant according to his information and belief.

3. The Receiver further suggests to the Court that the services alleged to have been rendered by the said Herbert U. Feibelman were rendered prior to the passage of Senate Bill 288, of the 1933

session of the Legislature of Florida, prior to the passage of which said act the funds in the hands of the State Treasurer were liable only for the payment of claims arising out of surety bonds or surety contracts; that the claim of Herbert U. Feibelman arose by reason of services alleged to have been performed prior to the passage of any law authorizing any portion of this fund to be used for administrative purposes in administering the fund. The Receiver, therefore, submits to this Court the question of whether or not the fund arising from the securities deposited with the State Treasurer is applicable to the payment of the claim of the said Herbert U. Feibelman, and, if the Court should determine that it might be applicable, whether or not it is the duty of the Receiver to pay claims arising out of surety contracts and surety bonds before applying any portion thereof to the payment of the claim of the said Herbert U. Feibelman, and whether or not, if the said Herbert U. Feibelman is entitled to collect for the services, the Receiver should be required to pay same only in the event there is a surplus left in his hands after the payment of surety bonds and surety contracts.

287 4. That the said Herbert U. Feibelman has not filed his claim with the said Receiver, as provided by law.

D. M. LOWRY, *Receiver.*

In Circuit Court of Leon County

[Title omitted.]

Order Denying Petition of William H. Kelly

Filed Dec. 18, 1933

This cause came on to be heard upon the petition of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, praying that this Court allow and order paid to Herbert U. Feibelman, attorney at law of Miami, Florida, the sum of $3,500.00 for services and expenses rendered and expended prior to the appointment of the receiver, same to be allowed and paid out

288 of proceeds arising from the securities and trust fund heretofore deposited with and in the hands of the State Treasurer of the State of Florida; and the Court having heretofore passed upon this question upon the petition of Herbert U. Feibelman, therefore

It is ordered and adjudged that the petition of the said William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, be and the same is hereby denied and said petition dismissed.

Ordered and adjudged at Tallahassee, Florida, this 18th day of December 1933.

J. B. JOHNSON, *Judge.*

In Circuit Court of Leon County

[Title omitted.]

Order on rule to show cause

Filed Jan. 1, 1934

This cause coming on this day to be heard upon the petition of D. M. Lowry, Receiver of New Jersey Fidelity & Plate Glass
289 Insurance Company, for a rule that the Respondent W. V. Knott, State Treasurer and Insurance Commissioner of the State of Florida, show cause why certain bonds deposited with said State Treasurer and Insurance Commissioner by New Jersey Fidelity & Plate Glass Insurance Company should not be turned over and delivered to said D. M. Lowry as such Receiver, and the rule to show cause issued on such petition and the return of the Respondent to said rule to show cause, and the same having been argued by counsel for the respective parties, and the Court being fully advised in the premises;

It is, Thereupon, Ordered, Adjudged, and Decreed that W. V. Knott, as State Treasurer and Insurance Commissioner of the State of Florida, be, and he is hereby ordered and directed to turn over to D. M. Lowry, as Receiver of New Jersey Fidelity & Plate Glass Insurance Company, State of Vermont 3¾% Coupon Bonds; Vermont State Loans, Nos. 3316 to 3325, inclusive, and 3566 to 3575, inclusive, @ $1,000.00 each, totalling $20,000.00, deposited with said State Treasurer and Insurance Commissioner by said New Jersey Fidelity & Plate Glass Insurance Company.

Done and Ordered in Chambers at Tallahassee, Florida, this the 1st day of January, A. D. 1934.

J. B. JOHNSON, *Circuit Judge.*

290 In Circuit Court of Leon County

Answer and motion to dismiss

Filed April 30, 1934

Comes now D. M. Lowry, Receiver in Florida of New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, and files this his answer and motion to dismiss the several petitions and claims of the United States against him as such Receiver in this cause, which said claims are identified in said petition as arising under judgments rendered in the United States District Court of the Southern District of Florida as cases styled as follows:

U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 182–T, U. S. Civil.

U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 189–T, U. S. Civil.

U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 190–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 191–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 192–T, U S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 193–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 203–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 206–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 595–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 628–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 630–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 631–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 632–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 636–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 667–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 668–M, U. S. Civil.
291 U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 677–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 686–M, U. S. Civil.
U. S. v. N. J Fidelity & Plate Glass Ins Co., No. 723–M. U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 735–M, U. S. Civil.

and which said petitions and claims further bear the Receiver's file numbers, in the order set out above, of "U. S. 1" to "U. S. 20", inclusive, respectively:

The said Receiver makes this his answer to each of said claims herein separately and severally, and hereby interposes his objections and defenses to said petitions and claims singly and severally to each and every of the above-mentioned indentified and designated claims, to the same entent and as fully as if he made and filed a separate answer to each of said claims.

1. The Receiver admits the allegations of facts set out in Paragraph 1, but he denies that in any event the claimant is entitled to interest on its said judgment from the date of the appointment of a

Receiver of the New Jersey Fidelity & Plate Glass Insurance Company in the State of New Jersey, on, to wit: May 28th, 1932, or, at any rate, after the date of his appointment as Receiver in the State of Florida on May 17th, 1933.

2. The Receiver admits the allegations of fact in Paragraph 2.

3. The Receiver admits the allegations of fact in Paragraph 3.

4. The Receiver admits the allegations of fact in Paragraph 4 of the petition, but he denies the conclusion of law therein that
292 the said Receiver "now holds said bonds and/or securities for the benefit of this claimant." The Receiver admits, however, that he holds in his custody securities heretofore deposited by the New Jersey Fidelity & Plate Glass Insurance Company with the Treasurer of the State of Florida of the face value of Seventy-One Thousand Dollars ($71,000.00) (either in his active or constructive custody), together with certain cash in the amount of Three Thousand Eight Hundred and Fourteen Dollars and Forty-Five Cents ($3,814.45), which assets are the assets or securities deposited by the New Jersey Fidelity & Plate Glass Insurance Company with the State Treasurer, or cash derived from the sale thereof, or the accumulations thereto. The Receiver shows unto the Court that he holds no assets derived from any source other than arising out of the special deposit made by the New Jersey Fidelity & Plate Glass Insurance Company with the Treasurer of the State of Florida pursuant to Section 6302 of the Compiled General Laws of Florida and acts amendatory thereof.

5. The receiver admits that the order of the United States District Court dissolving its temporary restraining order was not a final adjudication of the rights of the claimant in the premises and that this Court has jurisdiction to determine the questions involved.

6. The Receiver shows unto the Court that the entire fund in his hands as Receiver in Florida of New Jersey Fidelity & Plate Glass Insurance Company, as aforesaid, is made up of the securities deposited by the New Jersey Fidelity & Plate Glass Insurance Company, or derived from the sale or accretions of said securities,
293 and that the said deposit of said securities by the said Surety Company with the Treasurer of the State of Florida was made pursuant to a valid police regulation in the form of a legislative enactment, now appearing in the Compiled General Laws of Florida of 1927 as Section 6302, as amended by Chapter 16248 of the Acts of Florida of 1933. The Receiver is of the opinion and alleges that the securities deposited as aforesaid, pursuant to the statutes of the State of Florida aforesaid, became and constituted a trust fund in the hands of said State Treasurer for the benefit of the State of Florida, its political subdivisions, and its citizens or residents; the Receiver would further show unto the Court that the said deposit of securities with the State Treasurer by the said New Jersey Fidelity & Plate Glass Insurance Company was made long prior to the accrual of said claims of the United States, and that said deposit was a complete segregation of said securities from the general assets of the said New

Jersey Fidelity & Plate Glass Insurance Company, and upon its deposit with the State Treasurer of the State of Florida, pursuant to the statutes of the State of Florida aforesaid, as a condition precedent to the carrying on of a surety business in the State of Florida, the said securities became and constituted a trust fund dedicated, segregated, appropriated, and set apart wholly for the benefit of the State of Florida, its political subdivisions, its citizens, and residents, holding or having claims arising under surety bonds and surety contracts in the State of Florida, and that such securities, or the proceeds arising from said securities, or the accumulations of interest therefrom, having been so segregated, deposited, appropriated, set apart, and dedicated as a trust fund for the purposes aforesaid, and for the beneficiaries aforesaid, are not liable for the payment
294 of debts and judgments due the United States of America. The Receiver further says that under Chapter 16247 and Chapter 16248 of the acts of Florida of 1933, the latter being amendatory of Section 6302 of the Compiled General Laws of Florida under which this Receiver is functioning, any funds in the hands of this Receiver or held by the State Treasurer are not applicable to the payment of debts due the United States until and unless all claims of Florida creditors have been satisfied and paid; that the said deposit of securities with the State Treasurer was required by the State of Florida in the exercise of its police power for its protection, as well as the protection of its political subdivisions and its citizens, for whom it had the power and the duty to legislate, and that said deposit, constituting a trust fund for the purposes aforesaid, was not required for the benefit of the United States Government and cannot be used for the payment of its claims without violating the trust and setting at naught a lawful statutory requirement of the State of Florida.

The Receiver further says that the United States Government, through its Congress, made provisions which to it appeared sufficient, regulating the writing of surety bonds payable to the United States of America, and providing the conditions upon which surety companies might write bonds payable to the United States, and that, therefore, the United States is confined to the protection provided by the statutes of the United States and the Government of the United States cannot, therefore, have the advantage of the laws passed by Congress for its protection and also take advantage of the laws enacted by the Legislature of the State of Florida solely for the protection of the State of Florida, its political subdivisions, and its citizens.

7. The said Receiver denies that the United States of Amer-
295 ica is entitled to be paid out of any assets in the hands of said Receiver, and particularly denies that it is entitled to be paid anything on its claim out of the proceeds derived from the securities deposited with the State Treasurer by the said New Jersey Fidelity & Plate Glass Insurance Company, or the proceeds of any sale thereof. He not only denies that the United States is entitled to be paid out of said assets, but he denies that the

United States has a prior right to be paid pursuant to Section 3466, Revised Statutes of the United States (Title 31, U. S. C. A. 191).

8. The Receiver is advised and believes that a number of the judgments obtained by the United States, on which claims have been herein filed, were obtained upon appearance bonds executed in behalf of persons charged with violation of the Federal prohibition laws, and that since the dates of the execution of the bonds the Nineteenth Amendment to the Constitution of the United States, prohibiting the manufacture, sale, or transportation of intoxicating liquors, has been repealed, and by reason thereof all prosecutions of such cases have been abated, and that the abatement of a prosecution under such circumstances and conditions would have, or should have, the effect of rendering unenforcible an appearance bond executed by a defendant charged with the violation of the National Prohibition Laws, and would also abate the collection of a judgment rendered on such a bond, since the defendant in such cases, who is the principal in such a bond, could not now be required to appear for trial, and for the court to penalize the innocent surety on such a bond, and thereby the creditors of such surety, when it becomes insolvent, would be inequitable and against the spirit and purpose of our laws. The Receiver, therefore, says that the claimant should be required to show in and by its several claims whether
296 or not the said bond was given as an appearance bond for a person charged with a violation of the National Prohibition Laws.

And now having answered the said petition as fully as said Receiver is advised it is necessary for him to answer, the said Receiver, singly and severally, moves the Court to dismiss the said petitions and claim, and as grounds of said motion the said Receiver assigns the following:

1. That this claimant shows that the New Jersey Fidelity & Plate Glass Insurance Company was declared to be insolvent and was placed in liquidation in the State of New Jersey, the State of its domicile, on May 28th, 1932, and a liquidator was duly appointed and qualified to liquidate the said New Jersey Fidelity & Plate Glass Insurance Company, and as such liquidator took charge of the assets and property of the said New Jersey Fidelity & Plate Glass Insurance Company, against all of which the petitioner claims a prior right for the payment of its indebtedness, but said petitioner fails to show that said liquidator has failed, or refused, or is unable to pay its claim, but seeks to subject to the payment of its claim a special deposit, or trust fund, set aside for a special purpose long prior to the accrual of petitioner's indebtedness. Wherefore, this Receiver submits that before claimant, in any event, can proceed against said special deposit given to secure Florida creditors, it should first be required to exhaust its remedy against the general assets of the New Jersey Fidelity & Plate Glass Insurance Company in the hands of the liquidator in the State of New Jersey.

2. That, as aforesaid, all of the assets in the hands of this Receiver are certain securities deposited by the New Jersey Fidelity & Plate Glass Insurance Company with the Treasurer of the State of Florida, pursuant to a valid statute of the State of Florida, which said deposit under said statute created a trust fund for the holders of surety bonds and surety contracts, in the State of Florida; that said trust fund was created by the terms of the statute and the
297 withdrawal and segregation of said securities from the general assets of said Surety Company, and the deposit of same with the State Treasurer prior to the accrual of claimant's indebtedness; that the beneficiaries of said trust fund were only the State of Florida, its political subdivisions and its citizens, holding surety bonds or surety contracts, and that because of the segregation and withdrawal of said securities from the general assets of said Surety Company, and the dedication of same for the purposes aforesaid, prior to the accrual of claimant's indebtedness, said claimant can have no lien thereon or prior right thereto, and because of the creation of said assets into a trust fund for the sole benefit of those hereinabove enumerated, and to the exclusion of the United States, the latter has not only no prior right to said fund, but no right whatsoever to participate therein.

3. That this Receiver is a statutory receiver, administering a statutory fund, pursuant to Chapters 16247 and 16248, Acts of 1933, which said statutes require him to pay first all Florida creditors; that said statute, as to said statutory fund at least, pretermits this claimant to the payment only out of any residue remaining in the hands of the Receiver after payment to all Florida creditors, and since the fund is a statutory fund, and the remedy a statutory remedy, claimant must accept the remedy in order to reach any part of the fund.

4. That Section 101, Title 31, under which the United States claims priority in right of payment, refers only to the estate of an insolvent in the hands of the "executors or administrators", and makes no reference to an estate in the hands of a receiver, and, therefore, the United States has no right to priority in payment in this instance.

298 5. That if the segregation of the said securities and the deposit of same with the State Treasurer, in compliance with the terms and purposes of Section 6302, Compiled General Laws of Florida, did not create a trust fund for holders of surety bonds and surety contracts in the State of Florida, as hereinabove contended, such segregation and deposit, under the provisions of the statute aforesaid, at least conferred upon such holders in the State of Florida of surety bonds and surety contracts an express lien, or at least an equitable lien, prior in time and right to any asserted lien of the United States.

6. That Section 6302, Compiled General Laws of Florida, as amended by Chapter 16248, Laws of Florida of 1933, is a valid statute, enacted under the police power of the State of Florida, for the

protection of those for whom it had the power to govern, and for whom it owed the duty to legislate; that the State of Florida had no power to regulate the financial transactions between the Federal Government and surety companies, and it, therefore, had no duty to legislate in aid of the Federal Government in such financial transactions, from which it follows that since the United States cannot be bound by State legislation, it cannot take advantage of it to the exclusion of those for whom the State undertook to legislate.

7. That the holders of obligations arising out of surety bonds and surety contracts in the State of Florida have vested rights in the securities deposited with the State Treasurer as aforesaid, and the granting of the prayer of the petition of the United States would deprive such holders of such obligations of their property without due process of law, in violation of Section 1, Article XIV, and Article X of the Amendments, of the Federal Constitution.

299 8. That the Government of the United States, through its Congress, is, and always was, empowered to enact legislation for its own protection against surety companies, insolvent and otherwise, and that pursuant to such power the Congress of the United States enacted laws for its protection in such eventualities, and its remedy, therefore, for the collection of any indebtedness due it by the New Jersey Fidelity & Plate Glass Insurance Company is under the statutes and laws of the United States and not under the laws of the State of Florida, which, as aforesaid, were enacted for the protection of the State of Florida, its citizens and political subdivisions.

9. That the Congress of the United States, having undertaken to legislate on the subject of the protection of the United States against surety companies, insolvent and otherwise, as appears by Section 191, Title 31, U. S. Code, as shown by Sections 6, 7, 8, 9, 10, and 11, of Title 6, U. S. Code, Annotated, the United States would be confined to the remedies provided by its legislation and which legislation would afford its exclusive and only remedy.

10. That the securities deposited with the State Treasurer as Insurance Commissioner, constitute and are a trust fund for the benefit of the State of Florida, its citizens and political subdivisions, which trust attached at the time the deposit was made with the State Treasurer, and which was prior to the date of the rendition of the judgments in question, and against which said trust fund no lien can exist, and therefore, the lien referred to in Section 191, of Title 6, United States Code, Annotated, does not and cannot attach to said securities.

11. The State of Florida is one of the few states in the
300 Union which by statute has required surety companies to deposit securities with the State Treasurer for its protection and the protection of its citizens and political subdivisions, and for the United States to participate in the funds derived from the sale of said securities, and in addition thereto to permit it, under Section 191, Title 6, of the United States Code, Annotated, to have a first

and prior lien on all of the assets of such insolvent surety companies, would be to give to the United States a double and unequal advantage, to the detriment of the State of Florida, its citizens, and political subdivisions, and would deny to the State of Florida, its citizens, and political subdivisions, the protection of the law enacted by the State of Florida for their benefit.

Wherefore the said Receiver moves the Court to dismiss the said petitions and to disallow the said claims of the said petitioner.

D. M. LOWRY,
Receiver in Florida of New Jersey Fidelity & Plate Glass Insurance Company.

_____ _____,
_____ _____,
Attorneys for Receiver.

[*Duly sworn to by D. M. Lowry, jurat omitted in printing.*]

301 In Circuit Court of Leon County

Certificate of Appointment of E. L. Semple, as Attorney-in-Fact, of the New Jersey Fidelity and Plate Glass Insurance Company

Filed May 8, 1934

New Jersey Fidelity & Plate Glass Insurance Company, Newark, New Jersey

CERTIFICATE OF THE APPOINTMENT OF ATTORNEY IN FACT

Know All Men by These Presents, That the Executive Committee of the Board of Directors of the New Jersey Fidelity & Plate Glass Insurance Company, a corporation duly organized and existing under the Laws of the State of New Jersey, and having its principal office in the City of Newark, hath made, constituted and appointed, and does by these presents make, constitute and appoint E. L. Semple of Miami and state of Florida, its true and lawful Attorney in fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds of suretyship, the amount of any one bond not to exceed One Hundred thousand and 00/100 Dollars ($100,000.00) and such bonds or undertakings when executed by E. L. Semple the foregoing Attorney in fact shall be as binding upon the said Company, as fully and amply, to all intents and purposes as if they had been signed by the President, sealed with the common seal of the Company and duly attested by its Secretary, hereby ratifying all the acts of said Attorney in fact, pursuant to the power herein given.

This Power of Attorney is made and executed pursuant to and by authority of the following By Laws adopted by the Board of Directors of the New Jersey Fidelity & Plate Glass Insurance Company,

at a meeting duly called and held on the 8th day of May 1923, at the office of the Company in Newark, New Jersey.

ARTICLE III. Signing Policies, etc.—All policies, bonds, recognizances, stipulations and all underwriting undertakings shall be valid: (a) when signed by the President, or a Vice President, or a Resident Vice President, as one representative of the Company, and the Secretary, or Assistant Secretary, or a Resident Assistant Secretary, or other duly authorized official or agent of the Company as the other representative of the Company, or (b) when executed by an Attorney in fact.

ARTICLE V. Executive Committee.—The Executive Committee shall generally exercise the full power of the Board not herein or by resolution otherwise provided for. They shall have authority to appoint Assistant Secretaries, Resident Vice Presidents, Resident Secretaries, Resident Assistant Secretaries, and Attorneys in fact, and to give such appointees full power and authority to sign and seal, with the Company's seal where required, all policies, bonds, recognizances, stipulations and all underwriting undertakings; and may at any time remove any such appointee and revoke the authority given them.

In witness whereof, the New Jersey Fidelity & Plate Glass Insurance Company has caused these presents to be signed by its
302 Vice President and its corporate seal to be hereto affixed, duly attested by its Asst. Secretary, this 2nd day of April, A. D. 1930.

[SEAL]

NEW JERSEY FIDELITY &
PLATE GLASS INSURANCE COMPANY.
By WARREN D. WARD, *Vice President.*

Attest:

OSCAR K. CLINE, *Asst. Secretary.*

STATE OF NEW JERSEY,
County of Essex, City of Newark, ss:

On this 2nd day of April, A. D. 1930, before me, the undersigned authority, personally came Warren D. Ward to me known, who, being by me duly sworn, did depose and say, that he resides in the City of Newark, New Jersey; that he is the Vice President of the New Jersey Fidelity & Plate Glass Insurance Company, a corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

[SEAL]

PAUL A. DONNELLY,
Notary Public of N. J.

I, the undersigned, assistant secretary of the New Jersey Fidelity & Plate Glass Insurance Company, do hereby certify that the original power of attorney, of which the foregoing is a full, true, and correct copy, remains in full force and effect.

In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of the Company the day written below.

Subscribed and sworn to before me this 8th day of September 1930.

[CORPORATE SEAL] OSCAR K. CLINE,
Assistant Secretary.

[NOTARIAL SEAL] FREDERICK N. WEBST,
Notary Public of New Jersey.

Notary public of New Jersey.
My Commission Expires April 3, 1933.

STATE OF FLORIDA,
County of Orange:

I hereby certify the above and foregoing to be a true and correct copy of the original instrument which has been checked and verified by me this 16th day of April A. D. 1934.

[SEAL] BERTHA B. LUKE,
Notary Public.

Notary Public State of Florida at Large.
My Commission Expires July 5, 1937.

303 In Circuit Court of Leon County

[Title omitted.]

Order assuming jurisdiction over the parties and subject matter

Filed May 16, 1934

This cause coming on to be heard on the verified bill of complaint herein, and it appearing to this Court that the defendant New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, authorized to transact business in the State of Florida, is insolvent, and that its assets have been placed in liquidation in the State of its incorporation, and it further appearing to this Court that under Section 6303, Compiled General Laws of 1927, as amended by Senate Bill 288, Laws of Florida, Acts of 1933, it is necessary that this Court assume jurisdiction of this cause and take charge of the assets of the defendant New Jersey Fidelity & Plate Glass Insurance Company:

It is, therefore, ordered, adjudged, and decreed that this Court does hereby assume jurisdiction of the parties to this cause and the subject matter of this action, pursuant to and under the provisions of Section

6303, Compiled General Laws of Florida, 1927, as amended by Senate Bill No. 288, Laws of Florida, Acts of 1933.

304 It is further ordered, adjudged and decreed that this Court does assume jurisdiction as aforesaid for the purpose of taking charge of the assets of the said defendant New Jersey Fidelity & Plate Glass Insurance Company located and situated in the State of Florida, including the securities of said defendant now on deposit with the defendant W. V. Knott, as Treasurer of the State of Florida, by the appointment of a Receiver to be hereinafter named and designated by this Court; and

It is Further Ordered, Adjudged, and Decreed that upon the entry of this order this Court assuming jurisdiction as aforesaid of this cause and the parties aforesaid, that all actions heretofore instituted, now pending, or which may hereafter be instituted in the State of Florida against the said defendant New Jersey Fidelity & Plate Glass Insurance Company, or against the securities of the said defendant deposited with the Treasurer of the State of Florida, or against any other assets of the said defendant New Jersey Fidelity & Plate Glass Insurance Company in the State of Florida, be and the same are hereby stayed and abated until the further order of this Court.

Ordered, Adjudged, and Decreed at Tallahassee, Florida, in Chambers, this 16th day of May A. D. 1933.

JOHN B. JOHNSON, *Judge.*

305 IN CIRCUIT COURT OF LEON COUNTY

[Title omitted.]

Motion to strike

Filed May 28, 1934

Comes now the United States of America, by its undersigned attorneys, and moves to strike as redundant, impertinent, irrelevant, and scandalous the several portions of the answer directed to the several petitions and claims of the United States, which said claims are severally filed, but which are answered in a group answer filed herein and styled "answer and motion to dismiss", and which said answer and motion to dismiss is directed to the several claims arising upon judgments rendered in the United States District Court for the Southern District of Florida as cases styled as follows:

U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 182–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 189–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 190–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Inc. Co., No. 191–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 192–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 193–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 203–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 206–T, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 595–M, U. S. Civil.

U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 628–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 630–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 631–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 632–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 636–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 667–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 668–M, U. S. Civil.

306 U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 677–M, U. S. Civil.

U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 686–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 723–M, U. S. Civil.
U. S. v. N. J. Fidelity & Plate Glass Ins. Co., No. 735–M, U. S. Civil.

1. Motion is hereby made to strike the language beginning with the words "The Receiver" in line 12 of Paragraph 6, and running through the words "residents" in line 17 of Paragraph 6. Said language is subject to this motion because, by inference, the United States of America is excluded as a beneficiary under said trust fund.

2. Motion is hereby made to strike the language beginning with the words "the said securities became and constituted a trust fund", in line 28 of Paragraph 6, and running through the words "The United States of America" in line 38, Paragraph 6. Said language is subject to this motion because:

(a) Said trust fund is, under the law, liable for the payment of debts and judgments due the United States of America.

(b) Thereby the Receiver has become a contestant protesting the right of the United States of America to participate rather than submitting to a due administration of the estate under the orders of the Court.

3. Motion is hereby made to strike the language beginning with the words "The Receiver" in line 39 of Paragraph 6, and running through the words "satisfied and paid" in line 46 of Paragraph 6. Said language is subject to this motion because:

(a) The United States of America is not deprived of participation and priority in the said funds as is claimed in said language.

(b) Thereby the Receiver has become a contestant protesting the right of the United States of America to participate rather than submitting to a due administration of the estate under the orders of the Court.

307 4. Motion is hereby made to strike the language beginning with the words "was not required" in line 52 of Paragraph 6 and running through the words "State of Florida" in line 54 of Paragraph 6. Said language is subject to this motion because:

(a) The same is an erroneous statement of the law.

(b) Thereby the Receiver has become a contestant protesting the right of the United States of America to participate rather than submitting to a due administration of the estate under the orders of the Court.

5. Motion is hereby made to strike the language beginning with the words "the United States is confined" in lines 61 and 62 of Paragraph 6, and running through the concluding words of said Paragraph 6. Said language is subject to this motion because:

(a) The same is argumentative.

(b) The same is an incorrect statement of the law.

(c) Thereby the Receiver has become a contestant protesting the right of the United States of America to participate rather than submitting to a due administration of the estate under the orders of the Court.

6. Motion is hereby made to strike the whole of Paragraph 7 because:

(a) The same is not a statement of the law.

(b) The United States of America is entitled to participate and to have its claims paid out of the proceeds of said securities.

(c) The United States of America is entitled to priority.

(d) Thereby the Receiver has become a contestant protesting the right of the United States of America to participate rather than submitting to a due administration of the estate under the orders of the Court.

308 7. Motion is hereby made to strike all the language of Paragraph 8, beginning with the words "The Receiver is advised" in line 1, and running through the words "National Prohibition Laws" in line 24. Said language is subject to this motion because:

(a) The same is immaterial and irrelevant.

(b) The liability upon the estreated bond was a concluded matter long before the adoption of the Nineteenth Amendment to the Constitution of the United States.

(c) Thereby the Receiver has become a contestant protesting the right of the United States of America to participate rather than submitting to a due administration of the estate under the orders of the Court.

John W. Holland,
JOHN W. HOLLAND,
United States Attorney for the Southern District of Florida,
Wm. A. Paisley by J. W. M.
WILLIAM A. PAISLEY,
Asst. United States Attorney for the Southern District of Florida,
Attorneys for the United States.

309 In Circuit Court of Leon County

[Title omitted.]

Order on claims of United States

Filed May 28, 1934

This cause coming on this day to be heard upon the claims of the United States Government, and the amendments thereto, in the hereinafter styled and entitled causes, to wit:

No. 182–T, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 189–T, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 190–T, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 191–T, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 192–T, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 193–T, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 203–T, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 306–T, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 595–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 628–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 630–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 631–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 632–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 636–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 667–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 668–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 677–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 686–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 723–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

No. 735–M, U. S. Civil, U. S. v. N. J. Fidelity & Plate Glass Ins. Co.

310 and upon the answer and motion of D. M. Lowry, Receiver in Florida of New Jersey Fidelity & Plate Glass Insurance Company, and on the motion of the United States to strike certain portions of the answer of the Receiver, and the Court having heard the argument of counsel for the claimant and for the Receiver, and having considered the claims, the answer of the Receiver, the motion to dismiss the claims and the motion to strike certain portions of the answer, collectively, and being advised in the premises, is of the opinion, and doth find, as follows:

That pursuant to Section 6302, of the Compiled General Laws of Florida, and statutes antecedent thereto, the said surety company deposited with the Treasurer of the State of Florida, as Insurance Commissioner of said State, securities of the face value of $75,000.00; that the above-mentioned securities, or proceeds from the sale of a portion thereof, constitute all of the assets of said surety company in the hands of the Receiver in the State of Florida; that the said securities were deposited with the State Treasurer as aforesaid by said surety company prior to the accrual of any liability to the United States, represented by the claims in question. The Receiver has contended that the securities deposited with the State Treasurer, and/or the proceeds therefrom, constitute a trust fund for the benefit of the State of Florida, its political subdivisions, and its citizens. The claimant contends that it has in most instances filed judgments rendered on appearance bonds, executed in the State of Florida, and that in the majority of instances notice of the failure of the surety company to pay said judgments within thirty days, as provided by Section 6303, of the Compiled General Laws, has been given to the State Treasurer, and that by virtue of Section 191, Title 31, United States Code Annotated, the United States has a lien against the securities deposited with the State Treasurer, as

311 well as a ——— ——— [copy illegible] argued in connection with these claims but if the contention of the Receiver is correct, that the securities deposited with the State Treasurer constitute a trust fund for the sole benefit of the State of Florida, its political subdivisions, and its residents and citizens, and that the Government of the United States is not a beneficiary under said trust fund, and by reason thereof is not entitled to participate in said funds for the payment of its claims, it will be unnecessary for the Court to go into the collateral questions presented to the Court by the pleadings.

The Court is of the opinion, and doth so find that the securities were deposited by the surety company with the State Treasurer, as Insurance Commissioner, for the protection of the State of Florida and its citizens and political subdivisions; that this fund was segregated and set apart out of the general assets of the surety company prior to the accrual of any liens in favor of the United States and that the Legislature of the State of Florida, in enacting such legislation did so with the intention of protecting those for whom it had the power to legislate, and that it was not the intent and pur-

pose of the Legislature to undertake to protect or secure claims or obligations due the Government of the United States. Entertaining these views, the Court is of the opinion that the Federal Government is not entitled to participate in the funds derived from the sale of securities deposited with the State Treasurer, as aforesaid,
312 until and unless the claims of residents and citizens of the State of Florida, political subdivisions of the State of Florida, and the State of Florida, holding obligations arising out of surety bonds or surety contracts, shall have first been paid.

The Court is of the further opinion that after all claims arising out of surety bonds and surety contracts held and proven by residents of Florida, political subdivisions of Florida, of the State of Florida, shall have been paid by the Receiver, and that there should then remain a surplus in the hands of said Receiver, that such surplus would thereupon become general assets of the said surety company, and that under Section 191, Title 31, of the United States Code Annotated, the United States Government would then have the prior right to participate in such surplus in the event it should not be made to appear that the said claims of the United States have not theretofore been paid.

The Court finds that certain of the claims here under consideration were reduced to judgment and notice served on the State Treasurer of the State of Florida, after said judgments had remained unpaid for thirty days, as provided by Section 6303, of the Compiled General Laws of Florida, prior to the date of dissolution or receivership of said surety company, so as to have conferred upon the holder of such judgments a lien upon the funds in the hands of the State Treasurer, if the holder of such judgments were entitled to participate in the funds derived from the sale of such securities. That there are other claims filed by this claimant which are not represented to be judgments obtained prior to receivership, but whether said claims are valid as judgments they, at least, represent a valid claim so as to entitle the Government to prior payment.
313 Under Section 191, of Title 31, of the United States Code Annotated, if the Government were entitled to participate in the funds in the Receiver's hands. The Court, however, is of the opinion that whether the said claims have been reduced to valid judgments or whether the judgments might be invalid and merely good as a claim, that the Federal Government is not entitled to participate in the proceeds derived from the sale of the securities in the hands of the State Tresurer, which fund the Court believes was a trust fund for the sole protection of the State of Florida, its political subdivisions and its residents or citizens.

It is, accordingly, therefore, ordered adjudged, and decreed that the several claims of the United States hereinabove set out are denied and disallowed as having a right to participate in any funds in the hands of the Receiver, derived from the said securities, or the sale thereof, until and unless the claims of the State of Florida, its

political subdivisions, and its residents shall have first been paid, but that in the event, after the payment of the claims of the State of Florida, its political subdivisions and its residents, and the expenses of this receivership shall have first been paid, there should remain a surplus or residue from the sale of said securities, that such surplus would thereupon become general assets of the said surety company, and that the United States, under Section 191, Title 31, United States Code Annotated, would have the prior right to participate in said surplus, upon a showing that its claims have not been paid by the General Receiver, or from other assets of the said surety company.

314 The motion of the claimant to strike certain portions of the answer of the Receiver is denied, and the motion of the Receiver to dismiss the claims of the United States is not sustained, because the Court retains jurisdiction of the claims for the purpose of adjudicating the right of the United States to participate in any surplus or general assets of the surety company should the occasion arise.

Done, ordered, adjudged, and decreed in Chambers at Tallahassee, Florida, this 28th day of May, A. D. 1934.

J. B. JOHNSON, *Judge.*

315 In Circuit Court of Leon County

[Title omitted.]

Report of D. M. Lowry, Receiver in Florida of New Jersey Fidelity and Plate Glass Insurance Company, on all claims filed with him within the statutory period of one year

Filed June 14, 1934

Comes now D. M. Lowry, Receiver in the State of Florida of New Jersey Fidelity & Plate Glass Insurance Company, a surety corporation, and presents this his report on all claims filed with him as such Receiver of said surety company within one year from the date of his appointment as Receiver, wherein said Receiver sets out the status of the claim, whether same is in his opinion in proper form and supported by proper evidence to authorize the payment thereof, as well as the objections to the payment of certain claims because of insufficient allegations, or insufficient proof, or because of legal defenses which the Receiver believes it his duty to raise.

316 Your Receiver by making this composite report has in mind furnishing a copy of same to every claimant, or his attorney, so that all creditors and all parties in interest may be fully advised as to the number, nature, and amount of all the claims filed with the Receiver to date, and so that thereby they may be fully advised as to the condition of the receivership, and so that any creditor so desiring may be given an opportunity to support his

own claim or to oppose the payment of any other claim that he deems unjust should the Court so order.

The Receiver shows to the Court that the total claims filed against the New Jersey Fidelity & Plate Glass Insurance Company in the State of Florida, not necessarily including interest and costs, amount to $47,840.62.

The Receiver herein below sets out the last inventory made by him, to wit, on May 17th, 1934, showing the amount of assets in his hands and the disbursements heretofore made, as follows:

Total disbursments as shown by last inventory	$1,127.16
Mar. 5, 1934, Waller and Pepper, Attorneys' fees	500.00
Mar. 5, 1934, Stanley C. Myers, Attorney's fees	500.00
Postage	1.68
Total disbursements	2,128.84
Received from W. V. Knott, State Treasurer of the State of Florida and Insurance Commissioner	4,985.36
Received from W. V. Knott, State Treasurer of the State of Florida and Insurance Commissioner, on Jan. 20, 1934	956.25
Total Disbursements	5,941.61
Balance, cash on hand	2,128.84
	3,812.77
51 $1,000.00 State of Vermont 3¾% bonds	51,000.00
Total cash and bonds held	54,812.77

317 Your Receiver further states that there have been no additional receipts or disbursements since the making of said inventory hereinabove set out, except the payment of $25.00 for a renewal of his fidelity bond, which was paid out by order of the Court, and which leaves a balance of cash and bonds (par value) held of $54,787.77.

Your Receiver submits hereinbelow a report of the claims filed with him, together with his recommendations for the approval or disapproval thereof, as well as any objections which it appears proper that he should make relating to the several claims.

Claim No. 1.—Burbridge Realty Co.

This is a claim in the sum of $900.00, with interest thereon, which arises by virtue of cash collateral deposited with the Agent of the New Jersey Fidelity & Plate Glass Insurance Company, to secure a supersedeas bond. It appears that the liability under the supersedeas bond was subsequently cancelled; that the surety company returned the cash collateral to its agent, Bonding Company, Inc., in Miami, and that the Agent returned to the principal $1,100 of the cash collateral but failed to return $900.00 of the cash collateral received by the Agent from the surety company. It appears that the agent claims that the bonding company was indebted to it in a sum ——— ——— [copy illegible] is a dispute between the Agent and the bonding company as to the amount due from each to the other. It appears, how-

ever, that the surety company would be liable for the acts of its agent in failing to return this $900.00 and that the claim should be allowed.

Claimant seeks to have its claim decreed to be a preferred claim on the th'ory that this collateral deposit was held in trust. It would seem that since the surety company returned the collateral to the agent prior to insolvency of the company that no trust could now be impressed upon the funds of the surety company, although a different rule might apply were the funds still in the hands of the surety company. It is recommended that the claim be allowed, but in the opinion of the Receiver the claim is not entitled to preference.

The claim fails to show the date the supersedeas bond was cancelled and notification sent to the surety company for the return of the collateral. Therefore, it is impossible to ascertain what unterest, if any, accrued. The Court has heretofore held that interest would not be allowed after the date of the appointment of Receiver in the State of incorporation, to wit, May 28, 1932.

318 Claims Nos. 2 to 13, Inclusive—State of Florida for the Use and Benefit of Dade County

These claims are all based upon judgments obtained prior to the insolvency of the New Jersey Fidelity & Plate Glass Insurance Company on appearance bonds executed by the surety company to the State of Florida for the following-named defendants in the amounts and on the dates hereinafter set forth:

Harry Doyle, November 9, 1932, $100.00, $7.45 costs.
Charles Baker, November 9, 1932, $100.00, $7.45 costs.
John Frank, November 9, 1932, $100.00, $7.45 costs.
John Frank, November 9, 1932, $100.00, $7.45 costs.
J. W. Williams, February 14, 1933, $500.00, $6.20 costs.
Marie J. Roberts, November 9, 1932, $100.00, $7.45 costs.
C. H. Henderson, February 14, 1933, $250.00, $6.20 costs.
S. L. Halstead, February 14, 1933, $500.00, $6.20 costs.
John Wilson, February 14, 1933, $100.00, $6.20 costs.
John Todd, February 9, 1932, $2,500.00, $7.20 costs.
F. L. Hoffman, November 9, 1932, $500.00, $7.45 costs.
Buck Finch, November 9, 1932, $100.00, $7.45 costs.

The proof shows that after the judgments had remained unpaid for thirty days or more notice was served upon the State Treasurer, as provided by Section 6303, which notice was served on the 6th day of April 1933. These judgments appear to be valid and the claim fully proven, and under the holding by the Supreme Court of Florida in State, ex rel Vetter v. Knott, 153 So. 606, it would seem that each of the above claims are preferred claims and entitled to be paid as such. It would appear also that under Section 1348, of the Compiled General Laws of Florida, that these claims would be preferred even tho the lien of the judgments had not been perfected prior to the appointment of a Receiver for the surety company in Florida, to wit, May 17, 1933.

Claims Nos. 14 to 33, Inclusive—United States

These are claims filed by the United States Attorney based on judgments rendered in the United States District Court for the Southern District of Florida, in cases styled as follows:

182–T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
189–T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
190–T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
191–T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
192–T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
193–T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
203–T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
206–T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
595–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
628–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
630–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
319 531–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
632–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
636–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
667–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
668–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
677–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
686–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
723–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.
735–M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.

The Receiver has heretofore filed answers and motions to dismiss each of the above claims and the same have heretofore been argued by the United States Attorney and the Attorney for the Receiver. The Court, by order made on the 28th day of May 1934, sustained the contentions of the Receiver that the United States is not entitled to payment out of the securities deposited with the State Treasurer, as provided by Section 6302, of the Compiled General Laws of Florida, 1927, but that said claims can only participate in any surplus that might remain from the sale of securities deposited with the State Treasurer, after the payment of claims of Florida creditors, and the costs and expenses of the receivership. The Receiver, therefore, shows that the Court has already acted upon each of the claims of the United States hereinabove set forth.

Claim No. 34—Jay-Thorpe, Inc.

This claim is for the sum of $735.18, principal, and $26.95 costs and interest from April 7, 1933. It is based upon a judgment rendered on April 7, 1933, in the Civil Court of Record of Dade County, Florida. The claimant is a corporation under the laws of New York but alleged to be qualified to do business in the State of Florida.

The judgment is based upon a forthcoming bond alleged to have been executed by the surety company. The claimant prays that his claim be decreed to be a preferred claim. The Receiver submits the following: That the judgment was rendered on the 7th day of April 1933; that the surety company was declared insolvent and placed in liquidation in the State of its incorporation on May 28, 1932; that the receiver was appointed in the State of Florida May 17, 1933; that it does not appear that notice was served upon the State Treasurer, as required by Section 6303, so as to give the claimant a lien upon the assets in the hands of this Receiver. The Receiver further submits to the Court the question of whether or not a foreign corporation authorized to do business in Florida, which obtains a judgment in a Court of Florida is or is not entitled to have its claim participate in the proceeds of securities deposited with the State Treasurer. It would appear that if the claim is a proper one to be paid, that even though the judgment did not constitute a lien or a preference, that it should be considered as a liquidation of the amount due without further proof.

Claims 35 to 39, Inclusive—Snedigar & Baya

These claims are for attorneys' fees, totalling $1,029.49, for
320 services alleged to have been rendered by attorneys Snedigar & Baya prior to the date of the appointment of the Receiver of the Surety Company in Florida. The Court has heretofore held in similar instances that the funds deposited with the State Treasurer under Section 6302 were for the purpose of paying liabilities arising out of surety bonds and surety contracts and that same is not available for the payment of claims arising on open accounts or not out of surety bonds or surety contracts. The Receiver submits therefore, that the above claims be allowed only as claims against any general assets that might come into the Receiver's hands, or any assets that might remain in the Receiver's hands after the payment of all claims of Florida creditors arising out of surety bonds and surety contracts. While the claims are supported only by affidavit and memoranda as to services rendered and, therefore, the claims are not self-proven, the Receiver is of the opinion that the bills rendered are reasonable charges without the taking of further proof or reference to a Master.

Claim No. 40—Hernando State Bank

This is a claim for $1,000.00. The claim alleges the execution of two notes for $500.00 each by Empire Realty Securities Corporation, payable to the Widening Company, and assigned and transferred to claimant; that the notes were guaranteed by the bond of the New Jersey Fidelity & Plate Glass Insurance Company. The obligations bear interest from February 5, 1932. The claim has attached to it what are alleged to be copies of the notes and the bond guaran-

teeing the payment thereof. The Receiver recommends that the claimant be required to produce the original bond and the original notes or photostatic copies thereof to the Special Master to be appointed by the Court and if upon examination by the Special Master the copies of the notes and bond are duly proven that the claim be allowed. It is also recommended that the claimant be required to make a pro tanto assignment of the notes for whatever rights of action the Receiver may have against the Empire Realty Securities Corporation, the maker, and The Widening Company, the payee, of the notes. The claim is one payable out of the securities in the hands of the State Treasurer but is not entitled to any preference by reason of any judgment or lien.

Claim No. 41—Paul D. McGarry and John C. Sullivan

This claim arises out of a bond given in conformity with the issuance of a constitutional writ in the Supreme Court of Florida. The constitutional writ was issued at the instance of Harry Masser and Morris Baron against the London Operating Company. The condition of the bond was "that if the above-named Complainants and Appellants, Harry Masser and Morris Baron, shall pay whatever judgment for rent of the property involved in the above-entitled cause is obtained against them, in a court of competent jurisdiction, then this obligation and bond to be null and void, else to remain in full force and virtue." Thereafter, on, to wit, the 16th
321 day of December 1932, a final judgment was rendered in the Circuit Court of Dade County, Florida, in favor of the London Operating Company against Harry Masser and Morris Baron for the sum of $15,000.00 under a suit claiming rent in the sum of $45,000.00. The judgment obtained by the London Operating Company to the extent of $5,000.00 was thereafter assigned to Paul D. McGarry and John C. Sullivan. Therefore, the claimants, McGarry and Sullivan, claim $5,000.00 of the amount and the London Operating Company claims $10,000.00 of the amount due. The claim is supported by voluminous documentary evidence and on its face appears to be duly proven. In view of the fact that the amount of rent claimed was $45,000.00 and in view of the fact that the judgment rendered for rent was in the sum of $15,000.00, the exact amount of the bond given has caused the Receiver to scrutinize the claim very carefully, but he is without any facts upon which to base a suspicion that there might have been some collusion between the principal and the obligee in the bond as to the amount of the judgment obtained. However, the judgment is a final judgment and unappealed from and is, therefore, a liquidation of the amount due.

Claim No. 42—N. R. Robinson

This claim is in the sum of $5,000.00 plus Court costs and interest, and is based upon a judgment rendered in the United States Dis-

trict Court of the Southern District at Miami, on the 22nd day of December 1932. The judgment is rendered against one Bernard Hope, and arises out of an automobile accident. It is alleged that Bernard Hope, at the time of the accident, carried a policy of the New Jersey Fidelity & Plate Glass Insurance Company insuring the said Bernard Hope against loss on account of injuries or damage he might do in operating said automobile; that the extent of liability for a single accident was $5,000.00 under said policy. The policy is not exhibited with the claim.

The New Jersey Fidelity & Plate Glass Insurance Company was adjudged insolvent in the State of its incorporation on May 28, 1932, or some months before the judgment was rendered. The proof does not show whether the case was defended before the jury rendering the verdict or not. The judgment is against Bernard Hope and not against the surety company. Sections 6302 and 6303 of the Compiled General Laws, contemplate that the funds in the hands of the State Treasurer were deposited for the protection of the holders of surety bonds and surety contracts. The decision of the Supreme Court of Florida in *Travellers Indemnity Company* v. *Knott*, 153 So. 304, holds that an ordinary automobile policy is not a surety contract but an indemnity contract and that insurance companies writing automobile liability insurance are not required to make a deposit with the State Treasurer under Section 6302.

The Receiver, therefore, submits to the Court that the claim is not payable out of the funds derived from the securities deposited with the State Treasurer but only out of any general assets which the Receiver might have, and the further question is also submitted as to whether or not in the absence of a showing that the case was defended before the jury, the judgment should be considered as a liquidation of the amount due, and particularly in the absence of any proof as to the provisions of the policy.

322 Claim No. 43—The First State Bank, Eustis, Florida

This claim for $1,500.00 of the First State Bank of Eustis, arising out of the same circumstances and under the same facts as the claim of the Hernando State Bank of Brooksville, in that the bank holds the note of the Empire Realty Securities Corporation, the payment of which is guaranteed by the New Jersey Fidelity & Plate Glass Insurance Company, except that copies of the note and bond attached to the proof are certified by a notary public to be true and correct copies of the original. The Receiver makes the same recommendations and observations as to this claim as that made to Claim No. 40 above.

Claim No. 44—Barnett National Bank of Jacksonville, Florida

This is a claim for $500.00 and is identical with Claim No. 43 hereinabove and the same observations made in regard to Claim No. 40 are made in reference to this claim.

Claim No. 45—E. W. Yandre

This is a claim for $500.00 and is identical with Claims 43 and 44 hereinabove and the same observations made in regard to Claim No. 40 are made in reference to this claim.

Claim No. 46—Pearce Produce Co.

Pearce Produce Company, Inc. files claim for $2,500.00 alleging that it was defendant in a suit in the Civil Court of Record of Dade County, wherein Herbert Lee was plaintiff; that final judgment was rendered in said suit in favor of the plaintiff; that the claimant sued out a writ of error giving a supersedeas bond in the sum of $2,500.00 in which the New Jersey Fidelity & Plate Glass Insurance Company was surety; that the claimant deposited the sum of $2,500.00 in cash with said company as indemnity to protect the surety; that before the final determination of the cause the surety company was placed in the hands of the Receiver and the plaintiff thereupon required a new bond to be executed; that Herbert Lee executed a satisfaction of the judgment and proof of the satisfaction was made to the Commissioner of Banking and Insurance of New Jersey, but that the collateral deposited with the surety company was never returned. Attached to the claim are copies of letters from the New Jersey Fidelity & Plate Glass Insurance Company in liquidation, which do not deny the receipt of the cash collateral but refuse to pay same because it would be a discrimination against other creditors of the surety company. It would appear, therefore, that this claim should be allowed.

Claim No. 47—Joseph M. Schlesinger

This claim for the sum of $200.71 is alleged to be due by the surety company to the claimant for services rendered and expenses
323 incurred by the claimant. The claim does not prove itself and the Receiver is without information as to the justness thereof. He, therefore, recommends that the claimant be required to furnish a more complete statement as to how the obligation is alleged to have arisen and to further substantiate the same. From the Exhibits attached to the proof it would seem that the services were rendered for one R. J. Berensen and it is not shown that the obligation is the obligation of the surety company.

Claim No. 48—The London Operating Company

This is a claim of the London Operating Company for $1,030. This claim arises out of the same litigation apparently as that set out in claim No. 41. In addition to the issuance of a constitutional writ and the execution of a bond thereunder the complainants, Masser and Baron, took an appeal to the Supreme Court of Florida

and a supersedeas bond was executed, conditioned that in the event "said order appealed from, be affirmed or said appeal be dismissed, pay to the said defendant all costs and damages as may be occasioned by reason of said appeal and supersedeas, also all costs now or as may be hereafter taxed against complainants herein by this Court, etc." The case was affirmed by the Supreme Court of Florida, and the claim is for $480.00 costs paid prior to the entry of the final decree. The sum of $550.00 is claimed as attorney's fee and traveling expenses paid by the claimant. It is not shown by the claim that the costs and damages of suing out the appeal are $1,030.00, but the order of supersedeas made by the Circuit Court of Dade County provides that the condition of the supersedeas bond be, in the event the case is affirmed, that the complainants "pay to the said defendant all costs and damages as may be occasioned by reason of said appeal and supersedeas, also all costs now or as may be hereafter taxed against complainants herein by this Court." It appears that the purpose of the bond was to secure the payment of costs and damages which had then accrued, as well as costs and damages to accrue in the future, but it seems that the bond would only be liable for such costs as were "taxed against complainants herein by this Court." The question, therefore, is, whether or not the surety company would be liable for the costs unless it were shown that same had been taxed by the Circuit Court of Dade County. The Receiver fails to find any order of the Circuit Court of Dade County taxing the costs, but the final decree—Exhibit 2—provides that the costs "be hereafter taxed." The Receiver, therefore, submits to the court the question of whether or not in the absence of a showing of the taxing of the costs by the Circuit Court of Dade County the surety company would be liable under this claim.

General Observations and Recommendations of the Receiver

It is considered the duty of the Receiver to see that the funds coming into his hands are paid only to those lawfully entitled
324 to receive them and only upon proper proof of their justness and validity. It is probable that some of the claims herein reported on could be amended and supplemented with additional proof so as to authorize the approval thereof for payment.

In all cases in which the Receiver cannot from the claims and proofs accompanying same conclude that the claimant has conclusively proven his claim, the Receiver has declined to approve same on his own responsibility and submits the same to the Court for such action thereon as the Court shall see fit, which in some instances will require the taking of testimony in such manner as the Court shall deem advisable.

Section 6302 and Section 6303, of the Compiled General Laws of Florida, as well as Chapter 16248, of the Acts of 1933, apparently contemplate and provide that the securities deposited with the State Treasurer by the Surety Company were deposited for the protection

of surety bonds and surety contracts; that this is a deposit for that purpose; that claims which do not arise under surety bonds and surety contracts cannot be paid out of that trust fund, at least until the obligations arising under surety bonds and surety contracts shall have first been paid; that after the payment of all obligations of suretyship to Florida creditors that whatever surplus there might remain would thereupon become general assets and applicable to the payment of other properly proven and just claims.

In view of the fact that General Receivers of the New Jersey Fidelity & Plate Glass Insurance Company were appointed in the
325 State of New Jersey, and that Receivers may also have been appointed in other States than Florida, and in view of the fact that claimants may have filed claims with the Receivers in New Jersey or Receivers other than the Receiver in the State of Florida, all claimants will be required to make oath as to whether or not claims have been filed with other Receivers and what action, if any, has been taken thereon by such other Receivers, and whether or not anything has been paid thereon, so as to avoid duplication in payment.

The Receiver suggests that if your claim is susceptible of amendment or your proof may be supplemented that you file an amended claim, or amendments to your claim, or your supplemental proof without delay, so that legal questions may be determined, and if necessary that proofs may be taken, in order to expedite the winding up of the Receivership.

And now having reported fully on all of the claims filed with the Receiver, the Receiver prays that the Court will make an order fixing date upon which any and all exceptions to said report shall be filed by any party in interest, or any creditor, and providing that upon the failure of any party interested to file exceptions to this report on or before the date set further proceedings in reference to each such claim shall be thereafter ex parte; that the Court will also make an order authorizing the Receiver to have this report printed so as to furnish each claimant or his attorney with a copy thereof, and that the Court will authorize the Receiver to pay
326 for the printing of such report; that the Court will also in and by said order fix another and a subsequent date upon which this report will be brought on for hearing, together with any exceptions thereto, and that the Court require that a copy of said order, fixing said dates of filing exceptions to the said report, and for the final hearing of said exceptions and the final report, be printed with this report and furnished to each claimant, or claimant's attorney, along with said report; that upon the date set for the hearing of the exceptions to the report and the report, the Court will then undertake to settle all matters of law affecting the several claims as shall arise, and will at that time make such other and further orders affecting claims wherein proof shall be required or amendments allowed as to the Court shall seem proper.

Request of Receiver for Payment of Additional Compensation as Receiver

The Receiver shows unto the Court that for more than a year he has been serving as Receiver in the State of Florida for New Jersey Fidelity & Plate Glass Insurance Company; that the total compensation received by him heretofore as Receiver is the sum of $200.00; that the duties and responsibilities of the Receiver of said company have been great and the Receiver, therefore, feels that he should be allowed reasonable compensation for his services as Receiver for the year beginning May 17, 1933, ending May 17, 1934. He therefore prays that the Court will make and enter an order allowing to him such reasonable compensation for said services as the Court shall deem just and reasonable.

Respectfully submitted.

D. M. LOWRY,
Receiver in Florida
for New Jersey Fidelity & Plate Glass Insurance Co.

327 In Circuit Court of Leon County

No. 3171

[Title omitted.]

Order on receiver's report

Filed June 14, 1934

The Receiver having filed his report, together with his recommendations as to all claims filed with him as Receiver within the Statutory period of one year, and having prayed that he be authorized to have said report printed and for authority to pay for the printing thereof, so that a copy of said Report can be placed in the hands of each claimant, or attorney for each claimant, and for an order of the Court fixing a time in which all parties in interest or creditors may file exceptions to any part or all of said Report, and for a further order fixing the time in which the exceptions to said report and the said report shall be brought on for hearing before this Court, and to provide that upon the failure of any claimant, creditor, or party in interest to file exceptions to the Report of the Receiver on or before the day fixed in the order for filing exceptions that thereafter
328 the said matter shall proceed ex parte, insofar as the further consideration of the claim of any person so failing to except is concerned, and the Court having considered the same, is of the opinion that the petition of the said Receiver should be, and the same is, hereby granted.

It is, accordingly, therefore, ordered adjudged, and decreed that the said Receiver be, and he is hereby authorized to have his said report printed, together with copies of this order, and that he is authorized, empowered and directed to mail to each claimant, or the

attorney for each claimant, whose claims have been embraced in said Report, a copy of said Report and a copy of this order, and that he is authorized and empowered to pay for said printing and for the necessary postage and stationary for printing and mailing the said report and order without further order of this Court.

It is further ordered and adjudged that any claimant or attorney for any claimant be, and he is hereby authorized to file his exceptions to the report of the said Receiver; or to any particular claim or part thereof, on or before the 14th day of July, A. D. 1934, and that in the event any party in interest, creditor, claimant or the attorney for such party in interest, creditor or claimant should fail to file exceptions thereto, or any part thereof, on or before named date, that from thenceforth further consideration of said report, or any part thereof, as to such party in interest, creditor, claimant or attorney may proceed ex parte.

It is further ordered, adjudged, and decreed that any claimant, creditor, or party in interest desiring to supplement or amend his claim, or the proof thereof, shall have the right to so amend on or before the date set for the filing of exceptions to the report without the further order of this Court.

329 It is further ordered, adjudged, and decreed that the said report, together with any and all exceptions thereto, or any part thereof, shall be brought on for hearing before the undersigned as one of the Judges of the above-named Court, at Chambers in the Court House in Leon County, Florida, at Tallahassee, at ten o'clock A. M., on the 7th day of Aug., A. D. 1934, at which time the Court will consider any exceptions to such report, as well as the said report, and the request of the Receiver for reasonable compensation as prayed for in said report, and make such further orders relating thereto as shall be deemed proper, it being the view of the Court that questions of law affecting said report may be at that time determined and such further orders made as shall be deemed necessary relating to the taking of further proof on such claims as shall require the taking of proof.

Done, ordered, adjudged, and decreed in Chambers at Tallahassee, Florida, this 14th day of June, A. D. 1934.

J. B. JOHNSON, *Judge.*

330 In Circuit Court of Leon County

No. 3171

[Title omitted.]

Affidavit of Service

Filed June 25, 1934

STATE OF FLORIDA,
County of Leon.

On this day personally appeared before me, the undesigned authority, D. M. Lowry, who, being by me first duly sworn, deposes

and says that he is Receiver in Florida for the above-named surety company; that he did on the 23rd day of June, A. D. 1934, serve a copy of the Report of the Receiver on all claims filed with him within the statutory period of one year, as directed in the order of the Court dated June 14, 1934, as well as a copy of said order, upon all claimants, creditors, and parties in interest, by mailing a true and correct copy of said report and order to the following named claimants and parties in interest at the address set opposite the name of each, to wit:

London Operating Co., % Stanley C. Myers, Attorney, Miami.
Jay-Thorpe, Inc., % Roland W. Granat, Seybold Bldg., Miami.
331 Hon. John W. Holland, United States Attorney, Jacksonville.
Hon. Vernon Hawthorne, State Attorney, Miami, Fla.
Hernando State Bank, Brooksville, Fla.
Messrs. Sutton, Tillman & Reeves, Attorneys at Law, Tampa.
Mr. T. A. McNicholas, Spec. Ass't Dept. Comm'r Ins., 31 Clinton St., Newark, N. J.
Mr. N. R. Robinson, c/o Patterson & Knight, Attorneys, Miami.
Mr. Welborn C. Phillips, Orlando, Fla.
Messrs. Snedigar & Baya, Attorneys at Law, Miami, Fla.
Burbridge Realty Co., c/o Ottos C. Stegemann, Attorney, Miami.
Mr. Herbert U. Feibelmann, Attorney at Law, Miami, Fla.
Leedy-Wheeler Co., Orlando, Fla.
Mr. Edward Siedler, Department of Banking & Insurance, 31 Clinton St., Newark, N. J.
Mr. Robert H. Anderson, Attorney at Law, Jacksonville, Fla.
Mr. Giles J. Patterson, Attorney at Law, Jacksonville, Fla.
Mr. H. A. Love, Jr., 613 Professional Bldg., Jacksonville.
Mr. Bart A. Riley, Seybold Building, Miami, Fla.
Mr. Joseph M. Schlesinger, c/o Southern Bail Bond Co., 511 W. Forsyth St., Jacksonville, Fla.
Messrs. Stapp, Gourley, Vining & Ward, Miami, Fla.
Mr. Claude L. Gray, Attorney at Law, Orlando, Fla.
Mr. Paul D. McGarry, Attorney at Law, Miami, Fla.
Hon. W. V. Knott, State Treasurer, Tallahassee, Fla.

D. M. LOWRY.

Sworn to and subscribed before me this the 23rd day of June, A. D. 1934.

[SEAL] KATHLEEN WATTS,
Notary Public, State of Florida, at Large.

My commission expires 6/8/38.

332 In Circuit Court of Leon

No. 3171

[Title omitted.]

Supplemental report of D. M. Lowry, Receiver, to report on claims heretofore filed by him

Filed July 5, 1934

Claim No. 43—The First State Bank, Eustis, Florida

Claim No. 44—Barnett National Bank of Jacksonville, Florida

Claim No. 45—E. W. Yandre

Since the filing of the original report by me in *in* the above matter the above Claims Nos. 43, 44, and 45 have been further supplemented by the production of the original notes and bonds upon which said claims are based, which have been examined by me, and said notes and bonds are unquestionably genuine and valid and the Receiver, therefore, recommends that the said Claims Nos. 43, 44, and 45 be allowed.

D. M. LOWRY.
Receiver in Florida for New Jersey Fidelity & Plate Glass Insurance Company.

333 In Circuit Court of Leon County

Nos. 3111 & 3171

[Title omitted.]

Exceptions to receiver's report

Comes now William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company, plaintiff in the consolidated cause, by Herbert U. Feibelman, his attorney, and excepts to the report of the Receiver filed herein and referred to in the Court's order of June 14, 1934, in the particulars and on the grounds following:

Claim No. 1

The plaintiff excepts only to the allowance of interest on this claim of $900.00 because a release was obtained from J. H. Therrell, Liquidator of the Bank of Bay Biscayne, one of the obligees on the bond, on October 24th, 1932, which was after the date of liquidation.

Claim No. 2

Plaintiff is informed by its former investigator that liability under this bond was released and this plaintiff recommends that the Court records be investigated before final approval is given to this claim.

Claim No. 6—J. W. Williams

The plaintiff excepts to the allowance of this claim except in the sum of $250.00 plus costs, which is the amount of the judg-
334 ment. The bond provided that if Mr. Williams paid the judgment, fine, and future costs the bond was to be null and void, otherwise to remain in full force and effect, hence the claim at the full penalty of the bond should not be allowed.

Claim No. 8

This plaintiff excepts to the allowance of this claim for that it is based on an Appearance Bond, the penalty of which is $150.00. This plaintiff desires that the original bond be examined to determine the correct amount of the claim.

Claim No. 10

The plaintiff excepts to the allowance of this claim if a claim in the amount of $200.00, filed by the creditor with the New Jersey liquidator, is not withdrawn.

Claim No. 11

This plaintiff excepts to the allowance of this claim at this time for the following reasons:

"This is an Appearance Bond written by us as accommodation to the Public Indemnity Company for their client. According to the records our principal is serving a term in jail in Providence, R. I., with two other counts pending against him. Consequently, it is absolutely impossible for us to produce him in order to prevent technical estreature of the bond. We feel that, inasmuch as this person is in the custody of the law in some other State, proper recognition of this fact should be given the Surety and judgment not entered against them for the penalty of the bond because of this fact. We would be willing to enter into a compromise with the obligee for the complete settlement of the case or consent to the retention of $2,500.00 of the security pending a release of John Todd by the Providence, R. I., police officials, at which time we would cooperate with the Florida authorities in an effort to have him returned to their jurisdiction."

Claim No. 12

The plaintiff excepts to the allowance of this claim except for the amount of the embezzlement and nothing more.

335 Claims Nos. 14 to 33

This plaintiff excepts to the allowance of these claims upon the ground that the United States of America is not a citizen of Florida, and is not entitled to payment out of the securities deposited with the State Treasurer, as provided by Section 6302 of the Compiled General Laws of Florida, 1927, and this plaintiff suggests that the United States of America has the right to participate in any surplus that might remain from the sale of securities upon the transfer of any surplus in the Florida fund to the jurisdiction entitled to administer the same.

Claim No. 34

The plaintiff excepts to the allowance of this claim, for that the creditor is not a citizen of Florida, but is a foreign corporation organized under the laws of the State of New York, and the securities in the possession of the Receiver constitute a trust fund for the protection of Florida creditors and not citizens of other States, who should look to the estate under liquidation in New Jersey. The Plaintiff further excepts upon the ground that he is informed, and believes, and upon such information and belief charges that the principal on the bond is financially able to pay the judgment.

Claims Nos. 35 to 39; 42 and 47

This plaintiff excepts to the allowance of these claims as not proper charges against securities of the New Jersey Fidelity & Plate Glass Insurance Company in the hands of the Receiver, which, according to Florida law, are for the protection of surety claimants in Florida; this plaintiff objects to the allowance of these claims against any surplus which might exist after the payment of Florida creditors on surety claims and the costs and expenses of the Florida Receivership.

Claims Nos. 40, 43, 44, 45

336 These claims are based upon notes upon which suit has been entered and the notes themselves are subject to substantial defenses including, among others, the defenses of non est factum and want of consideration.

Claims Nos. 41 and 48

The London Operating Company were obligees on two bonds, one in the penalty of $15,000.00 under Florida Claim No. 41, providing

that Harry Masser and Morris Baron would pay whatever judgment for rent of the property involved in the action was obtained against them, and the other a Supersedeas Bond, Florida Claim No. 48, in the penalty of $2,000.00, providing that Harry Masser and Morris Baron pay all costs and damages that might be occasioned by reason of the appeal and supersedeas in the action covered by the $15,000.00 bond; The Supersedeas Bond, among other things, recites the following:

"Whereas, the said Harry Masser and Morris Baron, Complainants in the foregoing cause, instituted said suit and that whereas, on the 26th day of January A. D. 1932, the Honorable Paul D. Barns, Judge of the above styled cause dismissed said case without prejudice to the rights of the party, ordered the seventy-five hundred ($7,500.00) dollars deposited in the registry of the Court by the Complainants to be paid to the Defendant and order further that the Defendant recover of the Complainants the costs in said cause; and whereas, the said Complainants filed a Notice of Appeal from the order of the Court above mentioned; and whereas, the said Honorable Paul D. Barns, upon application made, granted a supersedeas to the Complainants to have the effect to suspend the Order of the Honorable Paul D. Barns hereinbefore mentioned, pending the hearing and determination of the said cause in the Supreme Court of Florida;"

The plaintiff therefore charges that the $7,500.00 deposited in the Court should be credited against the judgment of $15,000.00 because it was deposited as security to the London Operating Company and would have been paid to them immediately had it not been for the granting of the appeal covered by our bond of $15,000.00.

The plaintiff further charges that the $7,500.00 was im-
337 properly distributed and distributed not in accordance with the purpose for which it was deposited. The London Operating Company, through its attorney, is chargeable with the failure to collect the costs and fees which it seeks to collect from the Florida deposit by Claim No. 48 for $1,030.00.

Claim No. 42

The plaintiff excepts to the allowance of this claim upon the ground that the securities being administered in this Receivership are only for the benefit of surety claimants and upon the further ground that the obligee has filed proof with the New Jersey liquidation. The judgment itself was taken by default and this plaintiff has evidence that there was the defense of contributory negligence.

Claim No. 47

Plaintiff objects to the allowance of this claim upon the ground that the services for which payment is claimed were apparently rendered to Richard I. Berenson and are not chargeable to the New

Jersey Fidelity & Plate Glass Insurance Company. At all events, the claim not being founded on suretyship and being without reference to the preservation of the fund under administration, it cannot be paid from the proceeds of the securities in the possession of the Receiver.

Wherefore, plaintiff prays that after due notice hearing may be granted on these exceptions, and such orders entered thereon as equity and the law may require.

HERBERT U. FEIBELMAN.

Attorney for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company, Plaintiff.

338 In Circuit Court of Leon County

[Title omitted.]

Petition of Wm. H. Kelly

Filed July 23, 1934

Comes now William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company, plaintiff in the consolidated cause, by Herbert U. Feibelman, his attorney, and respectfully shows unto the Court as follows:

1. That he is in charge of the liquidation of the assets of the New Jersey Fidelity & Plate Glass Insurance Company in the State of its domicile, to wit: State of New Jersey, as will particularly appear from the original bill of complaint filed in the consolidated cause.

2. That the securities on deposit with the defendant, V. V. Knott, State Treasurer and ex-officio Insurance Commissioner, under Section 6302 of the Compiled General Laws of Florida, 1927, comprise a trust fund for the protection of obligees under surety bonds on which the New Jersey Fidelity & Plate Glass Insurance Company is surety; that these securities should answer for no other indebtedness than the indebtedness to these obligees, together with the costs
339, 340 and expenses of the Florida Receivership and expenses incurred in the preservation and protection of said Florida fund; that after the payment of the said indebtedness to Florida obligees and the costs and expenses of the Receivership and the preservation of said fund, the surplus, if any, should be turned over and delivered to this petitioner for administration and distribution in conformity with the laws of the State of New Jersey; that this surplus is not chargeable with any other indebtedness arising in the State of Florida than that of indebtedness under surety bonds and the costs and expenses of the Florida Receivership and the preservation of said

fund, and by no law in the State of Florida should such surplus be re' ained or administered in the pending Receivership after the dis-
arge of said indebtedness and such costs and expenses.

Wherefore, this petitioner prays that the Court will, after the payment of all just claims under Florida surety bonds, upon which the New Jersey Fidelity & Plate Glass Insurance Company was surety, and the proper costs and expenses of the Florida Receivership in this cause, and the costs and expenses of preserving the said Florida trust fund, enter an order that the surplus, if any, be turned over to this petitioner or his accredited representative.

HERBERT U. FEIBELMAN,
Attorney for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Co.

T. A. MCNICHOLAS,
Special Assistant Deputy Commissioner of Banking and Insurance of the State of New Jersey, in charge of the Liquidation of the New Jersey Fidelity & Plate Glass Insurance Company.

[*Duly sworn to by T. A. McNicholas; jurat omitted in printing.*]

341 In Circuit Court of Leon County

[Title omitted.]

Petition of Wm. H. Kelly

Filed July 31, 1934

Comes now William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company, plaintiff in the consolidated cause, through T. A. McNicholas, Special Assistant Deputy Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company, and respectfully shows unto the Court:

1. That the plaintiff, through the said T. A. McNicholas, Special Assistant Deputy Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company, is in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company in the State of its domicile, to-wit: State of New Jersey, and in liquidating the affairs of said corporation is primarily answerable for all of its assets, and for the distribution of the proceeds thereof equitably and proportionally amongst the creditors thereto entitled.

2. That the securities on deposit with the defendant, W. V. Knott, State Treasurer and ex-officio Insurance Commissioner, under and by virtue of Section 6302 of the Compiled General Laws of
342 Florida, 1927, constitute a trust fund for the protection of Florida creditors under surety bonds and for the expense of preseurving and protecting this fund, and the costs and expenses of administering the same in this consolidated cause.

3. Petitioner further shows that in order to conserve and protect the said trust fund for the sole benefit of those entitled thereto, and in order to determine all just claims against the same and the claims of those not justly and legally entitled to participate in said fund, and in order to reduce, wherever possible, the liability against the fund to the benefit of those entitled thereto, this petitioner has expended the sum of $12,337.22, as will more particularly appear from the hereto attached statement, made a part hereof and marked "Exhibit A." Petitioner further sets forth that following the refusal of this Court to award compensation to petitioner's attorney, Herbert U. Feibelman, for his services in protecting and conserving the said trust fund for the benefit of obligees under Florida surety bonds, and the costs and expenses for the administration of this consolidated cause the petitioner advanced the sum of $2,500.00 to his said attorney, and pending the action of the Supreme Court of Florida on the appeal from the said order of disallowance, the petitioner prays that he may be compensated for such expenditure.

4. Petitioner shows herein that Herbert U. Feibelman, Esq., his attorney, did heretofore, to wit: On the 16th day of October 1933 file herein his application for compensation and reimbursement, setting forth facts and circumstances substantiating this petitioner's right to reimbursement, and this pettioner does hereby adopt all of the allegations of said petition, as they relate to this petition the same as if they had been set forth herein.

5. Petitioner further shows through the expenditures made by the Liquidator, there were released 281 bonds, representing a total liability of $208,317.00, which would otherwise have been collectible out of the deposit with the State Treasurer of Florida.

343 Wherefore, the petitioner prays that after notice to all interested parties, the Court will enter its order granting reimbursement to this petitioner in the sum of $14,837.22.

HERBERT U. FEIBELMAN,
Attorney for William H. Kelly as Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Co.

[SEAL] T. A. MCNICHOLAS,
Special Assistant Deputy Commissioner of Banking and Insurance of the State of New Jersey, in charge of the Liquidation of the New Jersey Fidelity & Plate Glass Insurance Company.

[*Duly sworn to by T. A. McNicholas, jurat omitted in printing.*]

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Exhibit A

Expenses incurred by the New Jersey Fidelity & Plate Glass Insurance Company, liquidator in connection with effecting termination of liability on outstanding Florida surety bonds.

Expenses	Sept. 17, 1932, to Oct. 31, 1932	November 1932
Salaries	$595.00	$826.00
Allowance to Mr. J. K. Ricketts, $6.00 per day for living expense	246.00	180.00
Traveling expense	223.25	13.08
General office expense	188.17	29.86
Special investigations	81.90	10.00
Attorneys' fees		39.00
Court costs		
Totals	1,334.32	1,097.94

Expenses	December 1932	January 1933
Salaries	$764.00	$826.00
Allowance to Mr. J. K. Ricketts, $6.00 per day for living expense	186.00	186.00
Traveling expense	155.69	19.70
General office expense	62.96	88.55
Special investigations	8.00	117.00
Attorneys' fees	280.00	100.00
Courts costs	38.75	37.75
Totals	1,495.40	1,375.00

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Expenses	February 1933	March 1933
Salaries	$725.00	$726.00
Allowance to Mr. J. K. Ricketts, $6.00 per day for living expense	168.00	186.00
Traveling expense	32.15	310.70
General office expense	54.86	54.61
Special investigations	95.00	409.00
Attorneys' fees	100.00	
Court Costs	5.50	2.00
Totals	$1,181.51	$1,688.31

	April 1933	May 1933
Salaries	$764.00	$731.00
Allowance to Mr. J. K. Ricketts, $6.00 per day for living expense	180.00	186.00
Traveling Expense	28.00	276.45
General office expense	71.55	49.37
Special investigations	15.00	11.00
Attorney's fees	125.00	
Court Costs	7.00	
Totals	$1,190.55	$1,253.82

	June 1933	July 1 to Sept. 5, 1933	Totals
Salaries	$686.00	$351.00	$8,995.00
Allowance to Mr. J. K. Ricketts, $6.00 per day for living expense	180.00	186.00	1,884.00
Traveling Expense	136.00	5.50	1,200.52
General office expense	77.81	98.06	775.80
Special investigations			746.90
Attorney's fees			605.60
Court Costs			130.00
	$1,079.81	$640.56	$12,337.22

346 In Circuit Court of Leon County

No. 3171

[Title omitted.]

Exceptions of N. R. Robinson, claim number 42, to the report of D. M. Lowry, receiver

Filed Aug. 6, 1934

Comes now N. R. Robinson, claimant in claim No. 42, mentioned on page 8 of the report of D. M. Lowry, Receiver, by said claimant's undersigned attorneys, Patterson & Knight and excepts to the said report of the said receiver, filed in the above-entitled cause on the following grounds, to wit:

1. That said claimant is not in law the person entitled to the possession of the said policy and did not have possession thereof, and for this reason is not required to exhibit said policy with his claim.

2. That said claimant has made diligent effort to secure the original of said policy or a photostatic copy thereof, or a true copy thereof, from both the assured, Bernard Hope, and as well from W. H. Kelly, Commissioner of Banking and Insurance of New Jersey; but that since the entry of judgment against the said Bernard Hope, as defendant, the claimant, the plaintiff in said cause, has attempted to collect from said Bernard Hope, but is unsuccess-

347 ful due to the fact that the said Bernard Hope is hopelessly insolvent but by reason of plaintiff's efforts, the said Bernard Hope is antagonistic to this plaintiff, and plaintiff is unable to secure cooperation from him, or the original or a copy of said policy from him; that the claimant through his said attorneys has requested the New Jersey Fidelity & Plate Glass Insurance Company, through the office of W. H. Kelly, Commissioner of Banking and Insurance of New Jersey, and Charles F. Pollock, associate in said office, for a certified copy or photostatic copy of the policy of the said Bernard Hope, issued by said company, as will appear by copy of letter so requesting the same, attached hereto, marked "Exhibit A"; and in reply thereto received a letter from the said New Jersey Fidelity & Plate Glass Insurance Company, through W. H. Kelly, the Commissioner of Banking & Insurance of New Jersey, as per copy thereof, attached hereto, marked "Exhibit B"; and the claimant is attempting at this time to secure a copy of said policy from the Commercial Casualty Insurance Company as mentioned in said exhibit, and claimant says that it has used every diligence to procure the policy or a true copy thereof; that therefore, it should not be required to exhibit said policy to the claim.

3. Claimant says further that by letter dated November 9, 1832, a copy of which is attached hereto marked Exhibit C, W. H. Kelly, Commissioner of Banking and Insurance of New Jersey, recognized the fact that the said policy upon which this claim is based is out-

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standing, and in said letter advised claimant's attorneys that said policy number is 701846 and the limit $5,000.00.

4. That it is wholly immaterial as to whether or not the case was defended before the jury rendered its verdict.

348 5. That the record of the case of N. R. Robinson vs. Bernard Hope, in the District Court of the United States for the Southern District of Florida, affirmatively shows that the defendant filed pleas in said cause setting up the alleged contributory negligence and filed demurrers and motions to the declaration, and, therefore, defended said cause.

6. That it is unnecessary for the plaintiff to show whether or not said case was defended because under said policy it was the duty of the said New Jersey Fidelity & Plate Glass Insurance Company to defend said case and to pay all expenses for the defense thereof, and that if it so failed to do, this fact could not be set up the receiver to show that there was no liability on said policy.

7. Claimant excepts to the receiver's report because that, notwithstanding section 6302 and 6303 of the Compiled General Laws of Florida, said funds so deposited, although they may have been deposited for a special purpose, are nevertheless assets of the insolvent surety company within this State and subject to the jurisdiction and control of the Courts of the State of Florida, and to the administration thereof by the Courts, to subject the same to the payment of citizens of the State of Florida, lawfully claiming said funds on account of claims arising within said State.

8. That it clearly appears to have been the intent of the Legislature in the enactment of said sections 6302 and 6303 of the Compiled General Laws to create a fund subject to the claims of a class of claimants similarly situated with this claimant, and to protect the citizens of Florida upon causes of actions arising within

349 the State of Florida against such nonresident insurance companies.

9. And for further exception to said report, claimant says that the judgment itself is the highest possible evidence of liquidation obtainable, and that said claimant is not required to produce any proof as to the provisions of the policy in the face of the acknowledgment thereof, and the fact that the existence of the policy is not denied, and therefore has been confirmed by either the New Jersey Fidelity & Plate Glass Insurance Company, or by the said W. H. Kelly as Commissioner of Banking and Insurance of New Jersey.

10. That it is impossible for your claimant to produce the original of said policy or a true copy thereof, although the efforts hereinabove set out to procure the same have been made, and further effort was made by request to the office of the said W. H. Kelly as Commissioner of Banking and Insurance of New Jersey, and reply received from him, dated July 26, 1934, a copy of which said letter is attached hereto, marked "Exhibit E", which makes it appear that said policy is still in the hands of Bernard Hope, who is antagonistic

to the plaintiff and who is under no legal duty or obligation to give the plaintiff (your claimant) the original or a copy of the said policy; and that therefore, your claimant should not be required to produce any further proof as to the provisions of said policy.

Wherefore, your claimant says that the contentions of the receiver in respect to his claim, being claim number 42, are untenable and not well-founded; and your claimant excepts to the said report of said receiver, and asks that the receiver's position with respect to his said claim be not confirmed.

Dated this 4th day of August, A. D. 1934.

Patterson & Knight,
PATTERSON & KNIGHT,
Miami, Florida, Attorneys for Claimant, N. R. Robinson.
By W. CLINTON GREEN,
Of Counsel.

350 [*Duly sworn to by W. Clinton Green; jurat omitted in printing.*]

Exhibit A

AIR MAIL

JUNE 7, 1933.

NEW JERSEY FIDELITY & PLATE GLASS INS. CO.,
Newark, New Jersey.

At: Mr. Charles F. Pollock

Re: No. 18048—Robinson v. Hope

DEAR SIR: Heretofore on the 23rd day of December 1932 we have directed to your department proof of claim with certified copy of judgment rendered in the District Court of the United States
351 for the Southern District of Florida, in the amount of $5,000.00, against the assured in the above matter. We have received registered return receipt but no other acknowledgment of the claim. Will you be good enough at this time to advise what action, if any, has been taken with respect to the claim and further, whether anything additional is necessary on the part of claimant with respect thereto. In addition, we should be greatly obliged for your advices as to what amount of dividends you anticipate will be paid upon claims of this class, and also as to when such payment may be made.

We have in preparation a proof of claim to be filed with the State Treasurer of Florida, and also with the Receiver for the New Jersey Fidelity & Plate Glass Insurance Company, heretofore appointed in Leon County, Tallahassee, Florida, as against any assets of the company in the State of Florida, and especially against the statutory deposit filed by your company in the State of Florida. Heretofore you have advised us that the policy number was 701846, and that the policy limit was $5,000.00. We will thank you at this time to for-

ward to us a certified copy of the assured's policy or photostatic copy of the same with proper certificate attached. Your fee and expense in connection therewith will be promptly remitted, as we are desirous of expediting the filing of this particular claim as much as possible, and shall greatly appreciate your early attention thereto.

Stamped, air-mail envelope is attached herewith for your convenience in reply.

Very respectfully yours,

PATTERSON & KNIGHT,
By DEWEY KNIGHT.

K:L
Encl.

Exhibit B

W. H. Kelly, Commissioner of Banking & Insurance of New Jersey.
T. A. McNicholas, C. H. Baker, Special Assistant Deputy Commissioners.

New Jersey Fidelity & Plate Glass Insurance Company, Newark, New Jersey

In Liquidation

Re: No. 118048—Robinson vs. Hope

JUNE 9, 1933.

Messrs. PATTERSON & KNIGHT,
412 Seybold Bldg., Miami, Fla.

GENTLEMEN: In acknowledgmet of your letter of June 7th please be advised that proof of claim #L-890 submitted on behalf of the plaintiff in the above matter is now on file with the liquidator, to be acted on at some future date.

When examination on the merits of the claims takes place
352 you will be notified if further evidence is required.

All claims are subject to final approval of the court as to allowance.

The claims will share in such distribution as the assets will enable the liquidator to distribute upon approval of the court to allowed creditors.

We are unable to furnish you with copy of the assured's policy, for the reason that our copies of policies are now in possession of the Commercial Casualty Insurance Co. pursuant to reinsurance arrangements.

Yours truly,

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE CO.,
In Liquidation.

Charles F. Pollock,
By CHARLES F. POLLOCK.
CFP*AM

Exhibit C

W. H. Kelly, Commissioner of Banking & Insurance of New Jersey.
T. A. McNicholas, C. H. Baker, Special Assistant Deputy Commissioners.

New Jersey Fidelity & Plate Glass Insurance Company, Newark, New Jersey

In Liquidation

Re: No. 118048—Robinson vs. Hope

NOVEMBER 9, 1932.

MESSRS. PATTERSON AND KNIGHT,
412 Seybold Bldg., Miami, Fla.

GENTLEMEN: In acknowledgement of your letter of October 31st, enclosed please find Proof of Claim form to be used in the above matter. The assured's policy number is 701846, and the limit $5,000. All original papers, or photostatic copies thereof, to substantiate the claim must be attached.

Yours truly,

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE CO.,
In Liquidation.

Charles F. Pollock,
By CHARLES F. POLLOCK.
CFP*AM

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Exhibit E

W. H. Kelly, Commissioner of Banking and Insurance of New Jersey.
T. A. McNicholas, C. H. Baker, Special Assistant Deputy Commissioners.

State of New Jersey, Department of Banking and Insurance, Bureau of Insurance

Liquidation Division, 31 Clinton Street

NEWARK, N. J., *July 26th, 1934.*

Re: L–890

PATTERSON & KNIGHT,
412–416 Seybold Bldg., Miami, Florida.

GENTLEMEN: In reply to your letter of July 19th I regret to advise you that it is impossible for me to furnish you with either a certified photostatic or true copy of the policy issued to Bernard Hope.

In view of the fact that the judgment obtained was one against Mr. Hope, I suggest that you make demand upon him for a certified copy of his policy which I believe he still has.

Very truly yours,

JOSEPH A. CAFREY,
Superintendent of Claims.

JAC:CAM

354 In Circuit Court of Leon County

No. 3171

[Title omitted.]

Petition of David Hillman for intervention

Filed Aug. 6, 1934

To the Honorable Judges of said Court:

Comes now David Hillman and shows unto the Court as follows:

1. That your intervenor is and was at all times hereinafter mentioned a citizen and resident of Orange County, Florida.

2. That theretofore, to wit, on the 17th day of May 1932, Empire Realty Securities Corporation, a corporation, made, executed, and delivered to Wellborn C. Phillips, its two certain promissory notes, under seal, numbered 1 and 3, bearing said date, for the principal sum of Two Hundred and Fifty ($250.00) Dollars, each payable to the order of the said Wellborn C. Phillips at the First National Bank of Miami, Florida, each of said notes maturing on or before six months after their date and bearing interest at the rate of six per cent per annum from date until paid, interest payable semi-annually; that copies of said notes are incorporated into the copies of certain bonds hereinafter referred to and made a part hereof; copies of said notes in said bonds are also made a part hereof

355 by reference; that on the same day, as a part of said promissory note transaction and as a part and parcel of the inducement offered by said Empire Realty Securities Corporation to said Wellborn C. Phillips to accept said notes, the said Empire Realty Securities Corporation delivered to said Wellborn C. Phillips two bonds or writings obligatory, bearing said date, made payable to the said Wellborn C. Phillips, his heirs, successors, administrators and/or assigns in the sum of Two Hundred Fifty ($250.00) Dollars each; that one of said bonds was conditioned to pay the said note Numbered 1 and obligated the principal and surety thereon to pay said note, and one of said bonds was conditioned to pay said note Numbered 3 and obligated the principal and surety thereon to pay said note; that New Jersey Fidelity and Plate Glass Insurance Company, a corporation, by its duly authorized attorney in fact, executed said bonds as surety thereon, a copy of said bonds are hereto attached and made a

part hereof by reference and marked respectively, "Exhibits A and B."

2. That thereafter and before the maturity of said notes said Wellborn C. Phillips, payee named in said notes, for a valuable consideration, sold, endorsed, transferred, assigned, and delivered said notes and said bonds to your intervenor; that although said notes were presented at First National Bank of Miami, Florida, on their maturity and although your intervenor, the holder and owner of said notes, has made demand on said maker of said notes and on said surety since the maturity of said notes to pay said notes, the said notes and no part thereof, either principal or interest, has been paid and there is due to your intervenor, the owner and holder of said notes, at the time of filing this petition the full principal of each of said notes, as shown on their face, and interest thereon from their date, as provided by the terms of said note.

4. That prior to June 6, 1932, and before maturity of said
356 notes, your intervenor, learning from Honorable W. V. Knott, State Treasurer and Insurance Commissioner of Florida, that the affairs and assets of the said New Jersey Fidelity and Plate Glass Insurance Company had been taken over by the Insurance Department of the State of New Jersey for liquidation. advised the said Insurance Commissioner that your intervenor held said notes and bonds securing same and inquired of said Insurance Commissioner if your intervenor should make claim for the payment of said notes out of the statutory deposit of New Jersey Fidelity and Plate Glass Insurance Company, which was on deposit with said State Treasurer for the protection of its obligations in the State of Florida; that said Insurance Commissioner advised the said agent of your intervenor that New Jersey Fidelity and Plate Glass Insurance Company had the required statutory deposit for the protection of Florida policyholders with the State Treasurer and that same would be held by him until all claims against said company on account of bonds and policies issued in the State of Florida shall have been satisfied; that said Insurance Commissioner further suggested in said letter that your intervenor advise said Insurance Commissioner as to the details of your intervenor's claim against the said company "although I have no reason to doubt that the company will take care of such claims without the necessity of recourse upon the deposit referred to."

That on the 7th day of July 1932 the said Honorable W. V. Knott, as State Treasurer and Insurance Commissioner of Florida, by letter to your intervenor, suggested that your intervenor communicate with the Bureau of Insurance of the State of New Jersey with reference to the notes referred to; that your intervenor did communicate with the Bureau of Insurance of the State of New Jersey pursuant to said request but the said Bureau of Insurance refused to receive or recognize the claim until the said notes which the said bonds
357 secured had become in default; that after the said notes which the said bonds secured had become in default, your intervenor

filed its said claim with the Insurance Department of the State of New Jersey. That said claims were so filed on the 20th day of December 1932.

5. That on, to wit, July 16, 1934, the suit of The London Operating Company, a Florida corporation, as complainant, vs. New Jersey Fidelity and Plate Glass Insurance Company, a corporation, and W. V. Knott, as Treasurer of the State of Florida, as defendants, pending in the Circuit Court of the Second Judicial Circuit of Florida, in and for Leon County, in Chancery, came to the attention of your intervenor for the first time, and your intervenor on said date learned for the first time that Honorable D. M. Lowry had been appointed by the said court as receiver of the assets of the said New Jersey Fidelity and Plate Glass Insurance Company; that on said date your intervenor, through his attorney, H. N. Roth, of Orlando, Florida, advised said receiver of the claim of your intervenor and inquired the status of said trust and requested said receiver to forward your intervenor proper forms for filing claim for the payment of said notes; that the said receiver, on July 19, 1934, advised your intervenor that he was appointed receiver in said cause on May 17, 1933 and all claims were required to be filed with him as said receiver within one year from the date of his said appointment and that said year had expired May 17th, 1934, and that he had no authority to receive and file the claim of your intervenor after said last named date.

6. Your intervenor avers that he was not notified of and did not know of the pendency of said suit or the appointment of said receiver until July 16, 1934.

7. That the report of said receiver filed in said cause on the — day of ———, 1934, shows that after the payment by the receiver of all claims filed with him and allowed by the court and after the payment of the costs of said suit and of said receivership, there
358 will remain of said funds in the hands of said receiver a surplus sufficient out of which to pay the said claims of intervenor.

Your intervenor prays:

1. That he be allowed to intervene in this cause and set up his claim.

2. That his claim be declared to be a lien on the assets in the hands of the said receiver and on any other assets of the New Jersey Fidelity and Plate Glass Insurance Company coming into the hands of said receiver in this cause.

3. That it be decreed by the court that after the payment of the claims filed with said receiver and allowed by the court and after the payment of the costs of said suit, including the expenses of said receivership, that the surplus remaining in the hands of said receiver and any other assets of the said New Jersey Fidelity and Plate Glass Insurance Company coming to the hands of said receiver in this cause, or so much thereof as may be necessary to pay said claim of your intervenor, be subjected to the claim of your intervenor.

4. That the court determine the rights and privileges of your intervenor and decree that the claim of your intervenor be paid by the receiver.

5. That your intervenor have such other and further relief as to the court may seem right and proper and as to justice and equity may appertain.

GUYTE P. MCCORD,
Solicitor for said Intervenor.

[*Duly sworn to by Guyte P. McCord; jurat omitted in printing.*]

359 *Exhibit A*

Know All Men by These Presents: That Empire Realty Securities Corporation, a corporation, etc., as Principal and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc., as Surety are held and firmly bound unto Wellborn C. Phillips, hereinafter called the Obligee, his heirs, executors, administrators, and/or assigns, in the penal sum of Two Hundred and Fifty ($250.00) Dollars, for the payment of which sum well and truly to be made, the Principal and Surety do hereby find themselves, their successors, and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 17th day of May 1932.

The condition of this obligation is such that: Whereas, Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of Two Hundred and Fifty ($250.00) Dollars, payable on or before six months after date to the order of Wellborn C. Phillips, which promissory note is in words and figures as follows, to wit:

"MIAMI, FLORIDA, *May 17th, 1932.*

"No. 1, $250.00

"On or before Six (6) months after date, for value received, we promise to pay to the order of Wellborn C. Phillips, Two Hundred Fifty and No/Dollars, payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6% per annum, from date until fully paid. Interests payable semi-annually. The maker and endorser of this note further agree to waive, demand notice of nonpayment and protest and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payment to bear interest from maturity at 6% percent, per annum payable semi-annually.

"EMPIRE REALTY SECURITIES CORPORATION,
"F. H. RAND, JR.,
"*President.*"

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

And, Whereas, the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as
360 to principal and interest, upon demand of the Obligee, or the assignee of the Obligee, in the event the said note be not fully paid by the Empire Realty Securities Corporation at its maturity.

Now, if the above described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void; else same shall remain in full force and effect.

A Condition of this bond is that no assignment or endorsement of the above-described note shall in any way relieve the Surety from its obligation to pay said note in accordance with the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass to the Assignee, payee, endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

Witness the hand and seal of the Principal and Surety this day and year first above written.

[SEAL] EMPIRE REALTY SECURITIES CORPORATION,
By F. H. RAND, *President*,
As Principal.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
By E. L. SEMPLE, *Attorney in Fact*,
As Surety.

Signed, sealed, and delivered in the presence of:
GLADYS DEAVO
J. A. HARLIN

Exhibit B

Know All Men by These Presents: That Empire Realty Securities Corporation, a corporation etc., as Principal, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation, etc., as Surety, are held and firmly bound unto Wellborn C. Phillips, hereinafter called the Obligee, his heirs, executors, administrators and/or assigns, in the penal sum of two hundred and fifty ($250.00) dollars, for the payment of which sum well and truly to be made the Principal and Surety do hereby bind themselves, their successors, and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 17th day of May 1932.

The condition of this obligation is such that: Whereas Empire Realty Securities Corporation has this day executed its certain promissory note in the sum of two hundred and fifty ($250.00) dollars, payable on or before six months after date to the order of Wellborn C. Phillips, which promissory note is in words and figures as follows, to wit:

"MIAMI, FLORIDA, *May 17th, 1932.*

"No. 3. $250.00.

"On or before Six (6) months after date, for value received, we promise to pay to the order of Wellborn C. Phillips, two hundred fifty and No/100 Dollars, payable at First National Bank of Miami, Florida, with interest thereon at the rate of 6% per annum from date until fully paid. Interests payable semiannually. The maker and endorser of this note further agree to waive demand, notice of nonpayment, and protest and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand
361 of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 6 percent, per annum payable semiannually.

"EMPIRE REALITY SECURITIES CORPORATION,
By "F. H. RAND, Jr.,
"*President.*"

Payment guaranteed by bond of New Jersey Fidelity & Plate Glass Insurance Company.

And, whereas, the New Jersey Fidelity & Plate Glass Insurance Company has guaranteed the payment of said note, both as to principal and interest, upon demand of the obligee, or the assignee of the Obligee, in the event the said note be not fully paid by the Empire Realty Securities Corporation at its maturity.

Now, if the above described note be paid at maturity by Empire Realty Securities Corporation, or if the same be thereafter fully and promptly paid, both as to principal and interest, upon demand of the holder thereof, by the New Jersey Fidelity & Plate Glass Insurance Company, then this obligation shall be null and void, else same shall remain in full force and effect.

A Condition of this bond is that no assignment or endorsement of the above described note shall in any way relieve the Surety from its obligation to pay said note in accordance with the terms hereof, it being distinctly agreed that the obligation and guarantee of the Surety in this bond to pay said note shall pass the Assignee, payee endorsee, or holder of said note, by virtue of any assignment or endorsement thereof.

Witness the hand and seal of the Principal and Surety this day and year first *above written.*

[SEAL] EMPIRE REALTY SECURITIES CORPORATION.
By F. H. RAND, Jr., *President,*
As Principal.

[SEAL] NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY,
By E. L. SEMPLE, *Attorney in Fact,*
As Surety.

Signed sealed and delivered in the presence of:
GLADYS DEAVO.
J. A. HARLIN.

Order

It is ordered that the foregoing intervention of David Hillman be filed and that the intervenor be and he is hereby allowed to set up his claim in this cause within 30 days from this date.

Done and ordered at Tallahassee, Leon County, Florida, this 6th day of August, A. D. 1934.

J. B. JOHNSON,
Circuit Judge.

362 In Circuit Court of Leon County

No. 3111

[Title omitted.]

Answer and motion to dismiss of N. R. Robinson to petition of William H. Kelly

Filed Aug. 6, 1934

Comes now N. R. Robinson, a creditor of the New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, and answers the petition of William H. Kelly as Commissioner of Banking and Insurance of the State of New Jersey filed in this cause, and answering says:

1. This defendant is without knowledge of the facts set forth in paragraph #1 of the petition.

2. Answering paragraph #2 of said petition this defendant denies to be true the allegations of fact therein set forth as stated.

3. This defendant avers the truth to be that the securities deposited with W. V. Knott, State Treasurer and Ex-Officio Insurance Commissioner under section 6302 of the Compiled Laws of Florida, were deposited under the said Statute, and agreement that the said securities should remain so deposited until the depositing company should settle up all claims against it in the State of Florida, and until it shall have been released from all bonds which it might have been taken as surety, and until said bonds shall have been turned over to the proper party and presentation of Treasury's receipt for said bonds.

That New Jersey Fidelity & Plate Glass Insurance Company has been adjudicated insolvent and its assets have been placed in
363 liquidation in the State of its incorporation.

That the above-entitled bill has been duly filed and is pending in the Chancery Court in and for Leon County, Florida. And under the provisions of said bill a Receiver has been appointed to take charge of the said securities, and such receiver has taken charge of the said securities so deposited with the State treasurer under the provisions of the above-mentioned act and under Senate Bill "288" of the Acts of the Legislature of 1933, together with

all other assets of said New Jersey Fidelity & Plate Glass Insurance Company in the State of Florida.

That said receiver has taken charge of said securities and is in possession of the same, and has been directed, and is authorized by this Honorable Court to reduce the same to cash and to apply the proceeds of such sale in a proportionate amount to all of the Florida creditors who may make proof of their claims against the said Surety Company.

That it is further provided under said Senate Bill "288" that upon the said Chancery Court assuming jurisdiction of said securities and assets of such Surety Company all actions against the said company and the said securities and assets shall be stayed pending the further orders of said Court, and the State Treasurer and the State of Florida shall thereby be absolved from any further liability on account of said securities.

4. That this defendant is a creditor of said New Jersey Fidelity & Plate Glass Insurance Company, residing in the State of Florida; that the claim arose within the State of Florida and he is entitled to have his said claim satisfied and paid from the securities and bonds in the hands of the said Receiver, according to priority, and before any sum or portion of the said securities are delivered to the said William H. Kelly.

And now having fully answered, this defendant prays that the prayers of said petition, each and all, be denied and refused.

And this defendant filed this his motion for dismissal of said petition on the following grounds, to wit:

(1) That said petition does not set forth any right or title of petitioner in and to the said securities or any part thereof.

364 (2) The said petition does not set forth any right or authority of the petitioner to sue or file an action in the Courts of the State of Florida.

(3) Said petition wholly fails to set forth any right, claim, or cause for turning over of any of the said securities or assets of the petitioner.

(4) That it does not appear from said petition that any of the securities or the proceeds therefrom are subject to the claim of the petitioner.

(5) That it does not appear from said petition that there will be any of the securities or proceeds thereof remaining in the hands of the Receiver after the payment of claims, admittedly proper, to be paid by the Receiver in this cause.

(6) That said petition is prematurely filed.

(7) It is not alleged that this defendant will not be hurt or injured if the prayers of the petition shall be granted.

PATTERSON & KNIGHT.
Attorneys for Defendant.
By G. V. PATTERSON.
Of Counsel.

365 In Circuit Court of Leon County

No. 3111 & 3171

[Title omitted.]

Motion to strike exceptions to claim no. 41

Filed Aug. 7, 1934

Comes now The London Operating Company, by and through its attorneys Paul D. McGarry and John C. Sullivan, and moves the Court to dismiss the exceptions filed to Claim No. 41 for the following reasons, to wit:

1. That it affirmatively appears by reference to Claim No. 41 that no appeal was taken from the judgment of the Circuit Court in and for the eleventh Judicial Circuit of Dade County, Florida, and, therefore, no supersedeas bond entered or given.

2. It affirmatively appears that the exceptor, the New Jersey Fidelity & Plate Glass Insurance Company, has confused Claims Nos. 41 and 48, whereas, by reference to said proofs of claim it will readily be seen that said claims are based on separate and distinct causes of action, and that there is no relation between the two.

3. That the said New Jersey Fidelity & Plate Glass Insurance Company is collaterally attacking the judgment on which Claim No. 41 is based.

4. That said exceptions to Claim No. 41 are vague, indefinite, and uncertain.

(Signed) PAUL D. MCGARRY,
(Signed) JOHN C. SULLIVAN,
Attorneys for The London Operating Company.

366 In Circuit Court of Leon County

[Title omitted.]

Order on the report of D. M. Lowry, receiver in Florida for the New Jersey Fidelity & Plate Glass Insurance Company, on all claims filed with him within the period of one year from the date of his appointment

Filed Aug. 7, 1934

This cause coming on this day to be heard upon the Report of D. M. Lowry, Receiver in Florida for the New Jersey Fidelity & Plate Glass Insurance Company, on all claims filed with him within the statutory period of one year from the date of his appointment, on exceptions to said Report and to various portions of said Report filed by creditors or parties in interest, pursuant to notice given

by the Receiver of the bringing on of said Report and the exceptions thereto, and on oral argument of counsel for various claimants and parties in interest appearing at the hearing, and on the prayers contained in the Report by the Receiver, as well as on supplemental Petition filed by said Receiver for allowance of Attorneys' fees to his counsel, and it appearing that due and proper notice has been given to the claimants and all parties in interest of the bringing on of same for hearing, and the Court being advised in the premises, does hereby

Order, adjudge, and decree as follows:

The following claims are allowed in the amounts set opposite the same as preferred claims which are entitled to priority of payment out of the funds derived from the special deposit made with the State Treasurer to wit:

Claim No.		Principal	Costs	Total
3	Dade County—Chas. Baker	$100.00	$7.45	$107.45
4	Dade County—John Frank	100.00	7.45	107.45
7	Dade County—Marie J. Roberts	100.00	7.45	107.45
10	Dade County—John Wilson	100.00	6.20	106.20
12	Dade County—F. L. Hoffman	500.00	7.45	507.45
13	Dade County—Buck Finch	100.00	7.45	107.45

The following claims are allowed in the amounts set opposite the same as payable out of funds derived from the special deposit made with the State Treasurer, but not as preferred claims, and as such shall be paid out of such proceeds after the payment of all costs and expenses of the Receivership and preferred claims, to wit:

Claim No.		Principal	Costs	Total
1	Burbridge Realty Co	$900.00		$900.00
34	Jay-Thorpe, Inc	735.18	$26.95	762.13
41	Paul D. McGarry and John C. Sullivan	15,000.00		15,000.00
46	Pearce Produce Co	2,500.00		2,500.00

Exception having been filed by Wm. H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company in the State of its incorporation, and having represented to the Court that there were substantial defenses or reasons why the following claims should not be allowed, and having requested additional time in which to support the exceptions made by him, or additional evidence, the Court has reserved its decition on said claims and the said objector is allowed until the 20th day of August, A. D. 1934, within which to present evidence of legal grounds upon which said claims should be disallowed, to wit:

Claim No.		Principal	Costs	Total
2	Dade County—Harry Doyle	$100.00	$7.45	$107.45
6	Dade County—J. W. Williams	500.00	6.20	506.20
8	Dade County—C. H. Henderson	250.00	6.20	256.20
9	Dade County—S. L. Halstead	500.00	6.20	506.20
11	Dade County—John Todd	2,500.00	7.20	2,507.20

On the following claims, objections having been interposed by Wm. H. Kelly, in his official position as above set forth, to the allowance of the following claims, and having requested additional time in which to supply the Court with evidence in support of his objections or legal grounds upon which same should be disallowed, the
368 request for such additional time is hereby granted, and the objector is allowed ten (10) days from this date in which to supply the evidence upon which such objections are based, and the Court has reserved its decision on the following claims:

Claim no.		Principal	Costs	Total
40	Hernando State Bank	1,000.00		1,000.00
43	First State Bank, Eustis	1,500.00		1,500.00
44	Barnett National Bank of Jacksonville	500.00		500.00
45	E. W. Yandre	500.00		500.00

The following claims in the amounts set opposite the same, the Court finds are not payable out of the special deposit made with the State Treasurer and reserves for future determination the question whether or not the same are entitled to payment out of any surplus which might remain from the proceeds of the special deposit after the payment of all costs of administration, expenses of Receivership and the payment of all claims ordered paid out of such special deposit:

Claim no.		Principal	Costs	Total
14	182 T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
15	189 T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
16	190 T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
17	191 T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
18	192 T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
19	193 T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
20	203 T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
21	206 T, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
22	595 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
23	628 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
24	630 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
25	631 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			

Claim no.		Principal	Costs	Total
26	632 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
27	636 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
28	667 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
29	668 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
30	677 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
31	686 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
32	723 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
33	735 M, U. S. Civil, U. S. v. New Jersey Fidelity & P. G. Ins. Co.			
	Totaling (Including Court costs)			$14,075.00
35 to 39, Inclusive.	Snedigar & Baya	1,029.49		1,029.49
42	N. R. Robinson	5,000.00	7.50	5,007.50
47	Joseph M. Schlesinger	200.71		200.71

In Claim #48, London Operating Company, the Receiver has raised the objection that the Claim does not show that the Court costs were taxed as provided by said bond, and the attorney for the
369 claimant having requested additional time to supplement the proof of the claim by filing with this Court on Order from the Circuit Court of Dade County taxing certain costs, said request is hereby allowed and the claimant given ten (10) days from this date within which to file with this Court proper proof that the said costs have been taxed as provided in said bond. Ruling, therefore, on said claim is hereby reserved.

There also came on for hearing the petition of Wm. H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company in the State of its incorporation, for an Order of the Court directing its Receiver to turn over to the said Wm. H. Kelly, in his official capacity as aforesaid, all funds remaining in the hands of said Receiver after payment of all costs and expense of this Receivership and the payment of all claims arising out of surety bonds and surety contracts, upon which petition no Order is hereby made, and the questions therein presented are hereby reserved for future determination on orders of this Court, as well as the question of whether or not the Receiver of this Court shall be directed to pay claims against the said Surety Company not arising out of surety bonds and surety contracts.

There also came on for hearing the application of D. M. Lowry, the Receiver, for additional compensation for services rendered by him as such Receiver in this cause, and for the fixing and determining the amount of compensation to be paid to the Receiver's attorneys, of which said application all parties have received notice, and it is accordingly

Ordered, Adjudged and Decreed, the compensation to be paid D. M. Lowry, as Receiver in this cause for the service rendered by such Receiver is hereby determined at the additional sum of $800.00, and the said D. M. Lowry is hereby authorized and empowered to pay to himself, as Receiver, the said additional sum of $800.00 in payment of said Receiver's fees, and it is

370 Further Ordered, Adjudged, and Decreed, that the said D. M. Lowry, as Receiver in this cause, be and he is hereby authorized, empowered, and directed to pay to his Attorneys the sum of $2,000.00 to apply on account of said Attorneys' fees and as partial compensation for the services they have rendered in this cause to the Receiver herein.

The Receiver also presented to the Court the claim of the Bonding Company, Inc., against the said New Jersey Fidelity and Plate Glass Insurance Company, and submitted to the Court the question of whether or not the said claim should be considered, and it appearing to the Court that the said claim was presented to the Receiver after the expiration of one year from the date of the appointment of said Receiver and that under the Statute the said Receiver is not authorized to accept said claim or file same, and that the Court is also without power to authorize the filing of said claim after the expiration of one year from the date of the appointment of said Receiver, to wit: After May 17, 1934, the claim, therefore, having been presented to me cannot now be filed nor considered.

IT is further Ordered, Adjudged, and Decreed that the Receiver herein be and he is hereby authorized to have copies of this Order printed, and to mail to each claimant or the attorney for each claimant, whose claims or interests have been affected by this Order, a copy of this Order, and is hereby authorized and empowered to pay for said printing and for the necessary postage and stationery for printing and mailing the said order without further authority from this Court.

Ordered, Adjudged, and Decreed at Tallahassee, Florida, this the 7th day of August A. D. 1934.

(Signed) J. B. JOHNSON,
Judge of Circuit Court.

371 In Circuit Court of Leon County

No. 3171.

[Title omitted.]

Notice of hearing

Filed Aug. 25, 1934

To: H. U. FEIBELMAN, Esq.,
Attorney for William H. Kelly, as Commissioner of Banking & Insurance, Miami, Florida;
Hon. VERNON HAWTHORNE,
State Attorney, Miami, Florida;
LONDON OPERATING COMPANY,
c/o Stanley C. Myers, Esq., Miami, Florida;
SUTTON, TILLMAN & REEVES,
Attorneys for Hernando State Bank, Tampa, Florida;
CLAUDE L. GRAY,
Attorney for First State Bank of Eustis, Barnett Natl. Bank and E. W. Yandre, Eustis, Florida;
GUYTE P. MCCORD,
Attorney for David Hillman, Tallahassee:

You, and each of you, will please take notice that the hereto attached petition of D. M. Lowry, Receiver in the State of Florida of New Jersey Fidelity & Plate Glass Insurance Company, will be presented to the Honorable J. B. Johnson, one of the Judges of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, at his Chambers in the Court House at Tallahassee, Florida, at ten o'clock A. M., on September 3rd, 1934, for an order disposing of the claims mentioned in the aforesaid petition.

D. M. LOWRY,
Receiver in Florida of New Jersey Fidelity & Plate Glass Insurance Company.

372 STATE OF FLORIDA,
County of Leon:

On this day personally appeared before me, the undersigned authority, D. M. Lowry, who, being by me first duly sworn, deposes and says that he is Receiver in Florida for New Jersey Fidelity & Plate Glass Insurance Company; that he did on the 24th day of August A. D. 1934, serve the foregoing notice upon the following named parties, by mailing a true and correct copy of said notice, together with a copy of the petition therein referred to, in an envelope addressed to each of said parties at the address shown opposite the

name of each, and that the said envelope so addressed, sealed and deposited in the Post Office at Tallahassee, Florida, had placed thereon sufficient postage to insure its safe delivery:

H. U. Eeibelman, Esq., Attorney at Law, Miami, Florida.
Hon. Vernon Hawthorne, State Attorney, Miami, Florida.
London Operating Company, c/o Stanley C. Myers, Esq., Miami, Florida.
Sutton, Tillman & Reeves, Attorneys at Law, Tampa, Florida.
Claude L. Gray, Esq., Orlando, Florida.
Guyte P. McCord, Attorney at Law, Tallahassee, Florida.

D. M. LOWRY.

Sworn to and subscribed before me this 24th day of August A. D. 1934.

[SEAL] KATHLEEN WATTS,
Notary Public, State of Florida at Large.

My commission expires 6-8-38.

373 In Circuit Court of Leon County

[Title omitted.]

Petition for order, disposing of claims

Filed Aug. 25, 1934

Comes now D. M. Lowry, as Receiver in the State of Florida of the New Jersey Fidelity & Plate Glass Insurance Company, and shows unto the Court that on the 7th day of August, 1934, there came on for hearing before the Court the Report of this Receiver on all claims filed with him as such Receiver, together with objections and exceptions to said Report, and that the Court on the 7th day of August 1934 passed upon many of said claims and said exceptions, but that there yet remain certain claims unadjudicated; that William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey filed exceptions to certain claims and portions of the Receiver's Report and requested of the Court additional time in which to support certain exceptions to the hereinafter mentioned claims and the Court in and by its said order allowed the said William H. Kelly until the 20th day of August 1934 in which to present evidence in support of his objections, or legal grounds, upon which said claims should be disallowed, to wit:

Claim No.		Principal	Costs	Total
2	Dade County—Harry Doyle	100.00	7.45	107.45
6	Dade County—J. W. Williams	500.00	6.20	506.20
8	Dade County—G. H. Henderson	250.00	6.20	256.20
9	Dade County—S. L. Halstead	500.00	6.20	506.20
11	Dade County—John Todd	2,500.00	7.20	2,507.20

374 That the said William H. Kelly, in his official capacity aforesaid, filed exceptions to the allowance of the following claims, to-wit:

Claim No.		Principal	Total
40	Hernando State Bank	1,000.00	1,000.00
43	First State Bank, Eustis	1,500.00	1,500.00
44	Barnett National Bank of Jacksonville	500.00	500.00
45	E. W. Yandre	500.00	500.00

and requested additional time to supply the Court with evidence in support of his exceptions or legal grounds upon which same should be disallowed, and the Court, in and by its order made on the date aforesaid, allowed the said William H. Kelly ten days therefrom in which to supply said evidence or to present legal grounds upon which said claims should be disallowed:

That Claim No. 48, of the London Operating Company was objected to by this Receiver for the reason that the proof attached to said claim failed to show that the Court costs were taxed as provided in said bond. The claimant having requested additional time in which to supplement the proof of said claim by filing with the Court an order of the Circuit Court of Dade County taxing said costs and the request having been granted the said claimant was allowed ten days from the date of said order to file proof that the costs have been taxed.

The Receiver, therefore, shows that all of the claims hereinabove enumerated are undisposed of and that the time allowed in and by the order of the Court made on the 7th day of August 1934 has expired.

He further shows unto the Court that in Claim No. 6, Dade County, based upon judgment rendered upon the bond of J. W. Williams in the sum of $500.00 principal and $6.20 costs, the Attorney for William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, and Vernon Hawthorne, State Attorney for the Judicial Circuit comprising Dade County, have entered
375 into a stipulation, which stipulation has been filed in in this cause wherein and whereby it is agreed that the judgment entered in this cause should have been for the sum of $250.00 instead of for the sum of $500.00. It, therefore, appears to the Receiver that this claim should be reduced from the sum of $500 and allowed in the sum of $250.00, together with costs of $6.20, or a total of $256.20.

The Receiver further shows unto the Court that in Claim No. 48, of the London Operating Company, the claimant did, within the time allowed by the Court, present and file in this cause a duly authenticated copy of the order of the Circuit Court of Dade County taxing the costs in the cause in which said bond, upon which this claim is based, was given. The Receiver, therefore, shows unto the Court that Claims No. 6 and 48 have been supplemented in conformity with the Court's order and same are now ready for consideration.

The Receiver further shows unto the Court that the said William H. Kelly, as Commissioner of Banking and Insurance of New Jersey, has failed to present any evidence in support of his objections, or legal grounds, upon which the following claims should be disallowed and that the time allowed by the Court therefor has expired, to wit:

Claim No.		Principal	Costs	Total
2	Dade County—Harry Doyle	100.00	7.45	107.45
8	Dade County—C. H. Henderson	250.00	6.20	256.20
9	Dade County—S. L. Halstead	500.00	6.20	506.20
11	Dade County—John Todd	2,500.00	7.20	2,507.20
40	Hernando State Bank	1,000.00	------	1,000.00
43	First State Bank, Eustis	1,500.00	------	1,500.00
44	Barnett Natl. Bank of Jacksonville	500.00	------	500.00
45	E. W. Yandre	500.00	------	500.00

The Receiver further shows unto the Court that on the 6th day of August 1934 the Court signed an order permitting one David Hillman to file an intervention in said cause and further allowed the said David Hillman thirty (30) days to set up his claim in said cause, which said order was granted without notice to the
376 Receiver or his attorneys. The Receiver shows unto the Court that he was appointed Receiver of the New Jersey Fidelity & Plate Glass Insurance Company in Florida on May 17, 1933; that under Chapter 16,247 of the Acts of Florida 1933, all claimants are required to file their claims, together with legal proof thereof, within one year from the date of the appointment of a Receiver in Florida. The Receiver, therefore, shows unto the Court that the year within which claims are required to be filed with him as Receiver expired on May 17, 1934, and that, therefore, the intervention of the said David Hillman was filed too late and that the same cannot, therefore, be considered by the Receiver or by the Court, as has heretofore been held by this Court in similar situations. The Receiver therefore moves the Court as follows:

1. To vacate and set aside its order permitting the said claimant to intervene and allowing the said claimant 30 days to set up his claim.

2. That upon the vacating and setting aside of the order permitting said claimant to intervene that the Court will thereupon enter an order dismissing the intervention of the said David Hillman.

The Receiver shows unto the Court that the claims hereinabove referred to are all of the pending and undisposed of claims against this receivership and that shortly after the disposition of said claims it is the purpose of this receiver to file his final report and account and pray the Court for an order of distribution, but that such account cannot be filed while the said claims are undisposed of;

Wherefore, the Receiver prays that the Court will adjudicate the above claims so that the Receiver can file said final report on claims pending so that order of distribution may be made.

D. M. LOWRY, *Receiver.*

377 In Circuit Court of Leon County

No. 3171

[Title omitted.]

Order of court on undisposed claims

Filed Sept. 3, 1934

This cause coming on this day to be heard upon the petition of D. M. Lowry, as Receiver in Florida of the New Jersey Fidelity & Plate Glass Insurance Company, praying for the adjudication of certain claims not heretofore disposed of by the Court, and it appearing to the Court that due notice was given to the parties in interest of the date of hearing thereon, counsel for the Receiver being present, and the Court being fully advised in the premises, it is hereby

Ordered, adjudged, and decreed as follows:

It having been made to appear that William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, filed exceptions to certain claims and portions of the Receiver's Report and requested of the Court additional time in which to support certain exceptions to the hereinafter mentioned claims, and the Court in and by its said order allowed the said William H. Kelly until the 20th day of August 1934 in which to present evidence in support of his objections, and it appearing that the said William H. Kelly has failed to present any evidence in support of his objections, or legal grounds upon which the following claims should be disallowed, and that the time allowed by the Court therefor has expired,

378 it is hereby ordered, adjudged, and decreed that said exceptions and objections be, and the same are hereby overruled, and the following claims, in the amounts set opposite each, are hereby allowed as preferred claims against any sum derived from the sale of securities deposited with the State Treasurer, to wit:

Claim No.		Principal	Costs	Total
2	Dade County—Harry Doyle	100.00	7.45	107.45
8	Dade County—C. H. Henderson	250.00	6.20	256.20
9	Dade County—S. L. Halstead	500.00	6.20	506.20
11	Dade County—John Todd	2,500.00	7.20	2,507.20

The following claims are allowed in the amount set opposite the same as payable out of funds derived from the special deposit with the State Treasurer, but not as preferred claims, and as such shall be paid out of such proceeds after the payment of all costs and expenses of this Receivership and after the payment of all preferred claims:

Claim No.		Principal	Total
40	Hernando State Bank	1,000.00	1,000.00
43	First State Bank of Eustis	1,500.00	1,500.00
44	Barnett National Bank of Jacksonville	500.00	500.00
45	E. W. Yandre	500.00	500.00

It further appearing to the Court that the Attorney for William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, and Vernon Hawthorne, State Attorney for the Eleventh Judicial Circuit, have entered into a stipulation, which stipulation is filed in this cause, in reference to Claim No. 6—Dade County on the bond of J. W. Williams, wherein and whereby it is agreed that the judgment entered on said bond should have been for the sum of $250.00 instead of for the sum of $500.00, it is hereby ordered that said stipulation be and the same is hereby approved and the said claim allowed as a preferred claim in the sum of $250.00, together with costs of $6.20, or a total of $256.20.

379 It further appearing to the Court that in Claim No. 48—London Operating Company, the claimant has presented and filed in this cause a duly authenticated copy of the order of the Circuit Court of Dade County taxing the costs in the cause in which the bond upon which claim is based was given, in accordance with the previous order of this Court, it is hereby ordered, adjudged, and decreed that same claim in the sum of $1,030.00 be, and the same is hereby, allowed as a claim against the proceeds derived from the sale of securities deposited with the State Treasurer, but not as a preferred claim.

It further appearing to the Court that one David Hillman has filed an intervention and claim in said cause, which said intervention and claim were filed subsequent to the time allowed within which to file claims, and the Receiver having moved to dismiss the claim, it is hereby ordered, adjudged, and decreed that said motion to dismiss be, and the same is hereby sustained, without prejudice to the right of the claimant to take such action as he shall be advised as to any assets that might be left remaining after the payment of all claims that were filed and allowed within the statutory period of one year.

The said Receiver is hereby directed to serve a copy of this order upon all claimants and parties in interest hereby affected.

Done, ordered, adjudged, and decreed in Chambers at Tallahassee, Florida, this 3rd day of September, A. D. 1934.

J. B. Johnson, *Judge.*

380 In Circuit Court of Leon County

No. 3171

[Title omitted.]

Report of D. M. Lowry, receiver in Florida for New Jersey Fidelity & Plate Glass Insurance Company, and an accounting as of September 14, 1934, and prayer for sale of assets and decree of distribution and for further directions

Filed Oct. 4, 1934

Comes now D. M. Lowry, Receiver in the State of Florida for the New Jersey Fidelity & Plate Glass Insurance Company, and presents this, his account of receipts and disbursements, made by him as such Receiver, wherein he shows the total amount of General Assets, as well as the total of Trust Fund Assets in his hands, as well as the several and aggregate amount of claims heretofore allowed and the status of the receivership when the claims and expenses approved and allowed by the Court shall have been paid.

In the account hereto attached the securities heretofore deposited with the State Treasurer and now in the hands of the Receiver are carried at the par value thereof. Interest that has accrued since the last interest due date on the securities has not been com-
381 puted and embraced in the account, and the securities when sold will be sold with the unmatured coupons representing accrued but uncollected interest attached. By reason of the fact that the par value of said securities is not necessarily determinative of the market value and by reason of the fact that the accrued but uncollected interest is not computed, the total amount of the assets will vary as affected by the market price received, as well as the interest that shall have accrued at the date of sale. It is believed, however, that the securities can be sold for par value, plus accrued interest, in which event the total will be in excess of the total shown by the account filed herewith.

The Court has heretofore informally and orally announced the view that interest on the said securities accruing prior to the appointment of the Receiver in the State of Florida would be considered to be general assets, and that interest accruing subsequent to the appointment of the Receiver would be considered as an accretion to the trust fund or trust assets and administered as such. Accordingly, therefore, the Receiver has computed the interest accrued from the date of the last payment of interest to the surety company by the State Treasurer to the date of his appointment, and has set same out as a general asset. No further general assets have come into the hands of this Receiver. Interest accruing subsequent to the date of the appointment of the Receiver in Florida, to wit, May 17, 1933, has been computed and added to the trust fund assets, or as an accretion to the trust fund derived from the securities deposited with the State Treasurer.

The Court by its order made on the 7th day of August, 1934, and by its order made on the 3rd day of September, 1934, allowed the following claims in the amounts set opposite each as preferred claims, to wit;

382

Claim No.		Amount
2	Dade County—Harry Doyle	$107.45
3	Dade County—Chas. Baker	107.45
4	Dade County—John Frank	107.45
5	Dade County—John Frank	107.45
6	Dade County—J. W. Williams	256.20
7	Dade County—Marie J. Roberts	107.45
8	Dade County—C. H. Henderson	256.20
9	Dade County—S. L. Halstead	508.20
10	Dade County—John Wilson	106.20
11	Dade County—John Todd	2,507.20
12	Dade County—F. L. Hoffman	507.45
13	Dade County—Buck Finch	107.45
	Total amount of preferred claims allowed	4,784.15

The Court allowed the following claims in the amount set opposite each as being payable out of the securities deposited with the State Treasurer, to wit:

Claim No.		Amount
1	Burbridge Realty Co	$900.00
34	Jay-Thorpe, Inc	762.13
40	Hernando State Bank	1,000.00
41	Paul D. McGarry & John C. Sullivan	15,000.00
43	First State Bank, Eustis	1,500.00
44	Barnett National Bank of Jacksonville	500.00
45	E. W. Yandre	500.00
46	Pearce Produce Co	2,500.00
48	London Operating Company	1,030.00
	Total amount of nonpreferred claims allowed out of special deposit	23,692.13

There remains to be ascertained and paid as expenses of the receivership the following:

Court costs—Clerk Circuit Court Leon County.

Cost of printing and distributing copies of this and supplemental reports and orders of the Court to parties in interest.

Balance of Attorneys' fees to attorneys for Receiver.

The above undetermined expenses and other incidental costs are estimated not to exceed the sum of $3,000.00. The approximate deductions therefore should be as follows:

	Preferred claims	$4,784.15
	Non-Preferred claims	25,692.13
	Estimated expenses	3,000.00
	Total	33,476.28
383	Amount of Trust Fund Assets, to-wit	70,774.94
	Less Above Deductions	33,476.28
	Balance Estimated Trust Fund Assets	37,298.67
	Plus General Assets	1,193.32
	Total Residue (Estimated)	38,491.99

The Receiver would show unto the Court that the claim of William H. Kelly, Commissioner of Banking and Insurance in the State of New Jersey, for the sum of $3,500.00 was disallowed by previous order of the Court, from which order an appeal was taken to the Supreme Court and the decree of this Court affirmed by said Supreme Court and the decree of this Court affirmed by said Supreme Court; that a petition for rehearing has been filed and is undisposed of. The receiver would also show unto the Court that a claim for the same amount, arising out of the same state of facts was filed by Mr. H. U. Feibelman, for attorney's fees, which claim the Court also disallowed. An appeal has been taken from this order and same is pending in the Supreme Court of Florida. The two appeals, however, involve the same sum of money. The Receiver has delayed filing this report in the hope that the above appeals would be determined by the Supreme Court but the Supreme Court has not yet disposed of the above matters. The Receiver, therefore, files his report and in the event the above matters are not disposed of prior to the bringing on of this report for hearing, the Receiver recommends that he be directed to retain in his possession a sufficient amount to cover the above claim, in the event same should be adjudged valid against the receiver, and that he be authorized to proceed with the receivership in accordance with the prayers herein contained.

UNDISPOSED OF CLAIMS

384 Certain claims hereinafter referred to have not been finally disposed of in that the Court reserved in and by its previous orders, for further determination, the question of whether or not such claims are entitled to payment out of the surplus which might remain from the proceeds of the special deposit after the payment of all costs of administration, expenses of receivership and the payment of all claims ordered paid out of the special deposit, to-wit:

Claims 14 to 33, inclusive, of the United States Government in the total sum of	$14,075.00
Claims 35 to 39, inclusive, of Snedigar & Baya	1,029.49
Claim 42—N. R. Robinson	5,007.50
Claim 47—Joseph M. Schlesinger	200.71
Claim of William H. Kelly (hereinafter referred to)	14,837.22
Total Undisposed of Claims	35,149.92
Total Undisposed of Assets (Estimated)	38,491.99

In the list of claims undisposed of, hereinabove referred to, is found that of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, charged with the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company in the State of its incorporation, for the sum of $14,837.22, which claim is in the nature of a claim for refund by the said William H. Kelly in his official capacity for expenditures alleged to have been made

by him looking to the preservation and protection of the assets of the New Jersey Fidelity & Plate Glass Insurance Company in Florida, prior to the appointment of the Receiver in Florida. This claim is in the form of a petition, on which the Court has made no formal order, but which remains undisposed of. If the claim is one payable as a part of the cost and expenses of the receivership or incident to the preservation of the assets, it is probable that provision should be made by the Court for the payment thereof prior to the payment of claims which might be payable only out of the surplus of residue. Because of the fact that this claim is undisposed
385 of the estimated residue therein set out is, therefore, subject to change, should the Court allow the payment of the said claim.

The said Receiver now having made his report as fully and completely as he is able to do until matters hereinafter set forth shall have been determined by the Court, the said Receiver prays as follows:

1. That the Court will, by its order to be made upon the filing of this report, fix a short day for the bringing on of this report for hearing, after a copy thereof shall have been mailed to all parties in interest.

2. That upon the date fixed for the hearing of said report the Court will further make appropriate orders to:

(a) Determine the total amount of compensation to be allowed the attorneys for the Receiver.

(b) Adjudicate the undisposed of claims and determine whether or not this Receiver should distribute any surplus in his hands toward the payment of the claims of the United States and the other undisposed of claims, or whether or not this Receiver should remit such surplus to the Domiciliary Receivers of said surety company in the State of New York.

(c) Direct the said Receiver to sell a sufficient amount of securities in his possession to pay all claims allowed, together with the expenses, charges, and costs of this receivership, and to provide the manner by which the Receiver shall sell said securities.

(d) Authorize the Receiver, upon the sale of a sufficient amount of such securities to pay the claims allowed, as well as the costs, charges, and expenses of this receivership.

386 (e) Approve this report.

(f) Make such further orders and decrees in the premises as shall be meet and proper.

(Signed) D. M. Lowry.
Receiver.

387 ACCOUNT

Cash Receipts—General Assets

1933			
July 19.	Interest on $71,000 State of Vermont 3¾% Bonds from Dec. 1, 1932, to May 17, 1933, inclusive		$1, 275. 78
	Cash Receipts—Trust Fund		
1933			
July 19.	Interest on $71,000 State of Vermont 3¾% Bonds from May 18, 1933, to June 1, 1933, inclusive		55. 47
	Cashier's Check from W. V. Knott, State Treasurer, for proceeds from sale of $4,000 State of Vermont 3¾% Bonds after paying Judgment, plus Interest collected		3, 654. 11
1934			
Jan. 20.	Cashier's Check from W. V. Knott, State Treasurer, for 6 months interest on $51,000 State of Vermont 3¾% Bonds to December 1, 1933		956. 25
	Total Cash Receipts—Trust Fund		4, 665. 83
	Total Cash Receipts—General Assets		1, 275. 78
	Total Receipts to September 14, 1934		5, 941. 61
	Disbursements by order of Court		
1933			
Aug. 29.	Midyette-Moor Insurance Agency, Fire Insurance on Securities	$216. 00	
	Midyette-Moor Insurance Agency, Burglary and Robbery Insurance	82. 45	
	Midyette-Moor Insurance Agency, Premium on Receiver's Bond	25. 00	
	Capital City Publishing Co.—Legal Adv't	10. 00	
	Frank Stentamire, Sheriff—Services and Return Summons	4. 55	
Sept. 16.	Stanley C. Myers—Attorney's Fees	250. 00	
	Waller & Pepper—Attorney's Fees	250. 00	
Aug. 29.	Waller & Pepper—Expenses to Aug. 1, 1933	15. 22	
Sept. 22.	Clerk of U. S. Southern District Court—Fees	10. 00	
Oct. 17.	D. M. Lowry, Receiver—Postage	5. 44	
	D. M. Lowry, Receiver—Services	200. 00	
	Stanley C. Myers—Travelling Expenses	54. 00	
	Waller & Pepper—Travelling Expenses	4. 50	
1934			
Mar. 5.	Waller and Pepper—Attorney's Fees	500. 00	
	Stanley C. Myers—Attorney's Fees	500. 00	
Mar. 7.	Postmaster, 50 3c #8 Stamped Envelopes	1. 68	
Mar. 21.	Midyette-Moor Insurance Agency—Premium on Receiver's Bond	25. 00	
July 2.	Capital City Publishing Co.—100 Reports	19. 50	
Aug. 8.	Waller and Pepper—Attorney's Fees	1, 000. 00	
	Stanley C. Myers—Attorney's Fees	1, 000. 00	
	D. M. Lowry, Receiver—Services	800. 00	
	Total Disbursements		4, 973. 34
	Total Unexpended		968. 27

RECAPITULATION

Custodian Receipt from W. V. Knott, State Treasurer, dated October 24, 1933, for 71—$1,000 State of Vermont 3¾% Bonds		71, 000. 00
Receipts for General Assets		1, 275. 78
Apportionable Expenditures from General Assets		82. 46
Balance General Assets Unexpended		1, 193. 32
Receipts for Trust Fund	$4, 665. 83	
Apportionable Expenditures from Trust Fund	4, 890. 88	
Over-Expenditures of Trust Fund		225. 05
Net Cash on Hand		968. 27
Total Bonds on Hand (Par value)		71, 000. 00
Total Bonds and Cash on Hand 9/14/34		71, 968. 27

388 In Circut Court of Leon County

No. 3111

[Title omitted.]

Objections to the allowance of the claims of the United States

Filed Oct. 20, 1934

Comes now William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company, plaintiff in the consolidated cause, through T. A. McNicholas, Special Assistance Deputy Commissioner of Banking and Insurance of the State of New Jersey, in charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company, the plaintiff in this consolidated cause, and objects separately and severally to the allowance of each and every one of the claims of the United States of America upon the following separate grounds:

First: Because each of said claims is not entitled to priority under Section 3466, Revised Statutes of the United States (31 U. S. C. A. 191).

Second: Because it affirmatively appears that all of the assets of the New Jersey Fidelity & Plate Glass Insurance Company are not located in the State of Florida.

Third: Because it affirmatively appears that the New Jersey Fidelity & Plate Glass Insurance Company has not made a general assignment of all of its assets in the State of Florida.

389 Fourth: Because it affirmatively appears that the assets under administration do not comprise effects of an absconding, concealed, or absent debtor under attachment.

Fifth: Because it affirmatively appears that the New Jersey Fidelity & Plate Glass Insurance Company has not committed an act of bankruptcy in Florida.

Sixth: Because it affirmatively appears that the New Jersey Fidelity & Plate Glass Insurance Company has not had its principal place

of business in Florida for the greater portion of six months next preceding the institution of this suit.

Seventh: Because the surplus, if any, after the payment of the claims entitled to participate herein should be remitted to the principal liquidator in New Jersey.

Eighth: Because the court is without jurisdiction to administer the surplus after the payment of the claims of creditors entitled to participate therein.

HERBERT U. FEIBELMAN,
Attorney for plaintiff.

In Circuit Court of Leon County

No. 3111

[Title omitted.]

Order of the court on the application of the receiver for the sale of the securities received by him

Filed Oct. 20, 1934

390 This cause coming on to be heard upon the application of the Receiver for the sale of the securities received by him as Receiver of the New Jersey Fidelity & Plate Glass Insurance Company, from the Treasurer of the State of Florida, and it appearing to the Court that the Receiver has heretofore called for bids for the purchase of said securities and that during the hearing on the Report of the Receiver filed in said cause the Receiver received an offer by telegraph for the purchase of said bonds for 110% of the par value thereof; the Court believing that said offer should be accepted and no objections having been raised by the parties appearing at said hearing, the Court orally directed the Receiver to sell said securities under the said offer and the Court does here and now order, adjudge, and decree that said Receiver is authorized to sell the securities aforesaid at the price aforesaid, and the said State Treasurer is hereby directed to turn over the said securities in his hands to the Said Receiver and the Receiver is hereby directed to hold the proceeds pending the further order of this Court, except that the Receiver is hereby authorized and empowered to pay to his attorneys as additional compensation for their services to the said Receiver the further sum of $2,500.00, and also to pay the costs of Court that have accrued to date to the Clerk of the Circuit Court of Leon County, Florida; that the allowance of the attorneys' fees herein shall be the entire allowance to the attorneys for the Receiver unless it should thereafter develop that additional services should be required of said attorneys in the way of appeals from the orders of this Court, in which latter event, the Court reserves the right to award additional compensation for such services.

Done, Ordered, Adjudged, and Decreed in Chambers at Tallahassee, Leon County, Florida, this the 20th day of October, A. D. 1934.

J. B. JOHNSON, *Judge.*

391 In Circuit Court of Leon County

No. 3171

[Title omitted.]

Order of the Court on the report of the receiver

Filed Oct. 27, 1934

This cause coming on this day to be heard upon the account of the Receiver and his report filed in said cause, and on the application of the receiver for authority to sell the securities in his possession and to pay claims allowed and for the further order and direction of the court on the matters and things set up in said report, and it appearing to the court that the receiver has given due and proper notice of such hearing, and that attorneys representing the following parties were present at said hearing, to wit: Attorneys for the Receiver in Florida, Attorney for the Commissioner of Banking & Insurance of New Jersey, Attorneys for the claimants, United States, N. R. Robinson, Snedigar & Baya, and State of Florida for the use of Dade County, and the court having heard the report and the argument of counsel for the various parties, is of the opinion, and doth decree as follows:

1. That the account of the receiver filed herein is hereby approved.

2. That the court having heretofore made an order for the sale of the securities received by the receiver herein from the Treasurer of the State of Florida, the said receiver pay the

392 claims which have heretofore been proved and allowed as preferred and unpreferred claims payable out of the proceeds derived from the sale of the said securities deposited with the State Treasurer the following parties in the following amounts:

Claim No.		Amount
2	Dade County—Harry Doyle	$107.45
3	Dade County—Chas. Baker	107.45
4	Dade County—John Frank	107.45
5	Dade County—John Frank	107.45
6	Dade County—J. W. Williams	256.20
7	Dade County—Marie J. Roberts	107.45
8	Dade County—C. H. Henderson	256.20
9	Dade County—S. L. Halstead	506.20
10	Dade County—John Wilson	106.20
11	Dade County—John Todd	2,507.20
12	Dade County—F. L. Hoffman	507.45
13	Dade County—Buck Finch	107.45
1	Burbridge Realty Co	900.00
34	Jay-Thorpe, Inc	762.13
40	Hernando State Bank	1,000.00
41	Paul D. McGarry & John C. Sullivan	15,000.00
43	First State Vank, Eustis	1,500.00
44	Barnett National Bank of Jacksonville	500.00
45	E. W. Yandre	500.00
46	Pearce Produce Co	2,500.00
48	London Operating Company	1,030.00
	Total	28,476.28

3. That after the payment of the claims hereinabove and heretofore allowed as payable, together with the costs, charges, and expenses of this receivership heretofore allowed, that the receiver do file with this court a statement of the net balance remaining in his hands as such receiver.

4. The question of what shall be done with the residue then remaining in the hands of the said receiver is reserved for the further order of the court and the relative rights of the United States and creditors whose claims are not secured by the special deposit or trust fund, as well as the claim of William H. Kelly, as Commissioner of Banking and Insurance of New Jersey, for the payment to him of moneys alleged to have been expended by him in the interest of preservation of the assets of said surety company in the State of Florida, as well as the petition of the said William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, to receive the residue that will remain in the hands of
393 the receiver after the payment of all claims hereinabove allowed, is reserved for further determination of this court; since it appears that sufficient funds will remain in the hands of the said receiver after the payment of all claims of the United States as well as the claim of the said William H. Kelly for reimbursement, therefore, the payment of the claims herein and heretofore allowed will in no wise prejudice the United States, or the said William H. Kelly, nor the common creditors, to wit: Snedigar & Baya, N. R. Robinson and Joseph M. Schlesinger, on which claims decision is hereby reserved.

Adjudged, Ordered, and Decreed this 27th day of October, A. D. 1934.

J. B. JOHNSON,
Judge Circuit Court.

On November 3, 1934, Mandate of the Supreme Court of Florida in the case of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey versus W. V. Knott, State Treasurer and ex officio Insurance Commissioner of the State of Florida et al., was filed, and recorded in Chancery Order Book 11, on page 475, and is in words and figures as follows:

Mandate from Supreme Court

THE STATE OF FLORIDA

To the Honorable the JUDGE OF THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT OF FLORIDA, Greeting:

Whereas lately in the Circuit Court of the Second Judicial Circuit of Florida, in and for the County of Leon in a cause wherein William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, and The London Operating Company, a Flor-

ida Corporation, were complainants, and W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of the State of Florida et al., were defendants, the Order of said Circuit Court was rendered Dec. 18, 1933, as by the inspection of the transcript
394 of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And, whereas, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1934, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 4th day of August, A. D. 1934, it was considered by said Supreme Court that the said order of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant his costs by him in this behalf expended, which costs are taxed at the sum of Twelve and no/100 Dollars; therefore,

You are hereby commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Order of the Circuit Court notwithstanding.

Witness, The Honorable Fred H. Davis, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 3rd day of November, A. D. 1934.

[SEAL.]

G. T. WHITFIELD,
Clerk Supreme Court of Florida.

395 In Circuit Court of Leon County

Nos. 3111 and 3171

[Title omitted.]

Notice of appeal

Filed Nov. 5, 1934

Comes the complainant, William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, and, through his solicitor, Herbert U. Feibelman, Esq., enters this his appeal to the Supreme Court of Florida, from that certain order entered on October 27, 1934, approving the account of the receiver, directing the payment of preferred and unpreferred claims from the proceeds of the sale of securities on deposit with the State Treasurer, directing the receiver to file statement in court of the moneys on hand after payment of costs and expenses of the receivership and the
396 payment of said claims, and reserving the question of the surplus remaining after such disbursement as well as the petition of the said William H. Kelly, commissioner of Banking and Insurance of the State of New Jersey and the claim of the said

Commissioner of Banking and Insurance of the State of New Jersey, all in that certain cause pending in the Circuit Court for the 2nd Judicial Circuit in and for Leon County, Florida, in Chancery, wherein William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, was the Complainant, ans W. V. Knott, as State Treasurer and ex-officio Insurance Commissioner of the State of Florida, and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the insurance laws of the State of New Jersey, were defendants, #3111, and the London Operating Company, a Florida corporation, was complainant, and New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, and W. V. Knott, as Treasurer of the State of Florida, were defendants, #3171, the said Order being recorded in Chancery Order Book #11, page #464, in the Clerk's office of said court.

This appeal is entered on this 5th day of November 1934, and same is hereby made returnable in the Supreme Court of Florida, at Tallahassee, Fla., on the 22nd day of January 1935.

HERBERT U. FEIBELMAN,
Solicitor for Appellant.

397 In Circuit Court of Leon County

No. 3111 and No. 3171

[Title omitted.]

Application for supersedeas

Filed Nov. 5, 1934

TO THE HON JOHN B. JOHNSON, JUDGE OF SAID CIRCUIT COURT:

The Complainant, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, respectfully shows unto the Court that on, to wit, the 27 day of October 1934, the Court did enter its order, wherein it approved the account of the receiver, directed the payment of certain preferred and unpreferred claims from the proceeds of the sale of securities on deposit with the State Treasurer, and reserved the question of the disposition of the surplus remaining from said proceeds after the payment of said claims and the costs and expenses of the receivership (also directed to be paid) as well as the question of the payment of the claim of the said William H. Kelly, as Commissioner of the Banking and Insurance of the State of New Jersey, and his petition for the delivery to him the said surplus.

Wherefore, the said Complainant prays that Your Honor do grant an order of supersedes in said cause and determine the amount and condition of bond to be given in order to perfect said supersedeas.

This 5th day of November 1934.

(Signed) HERBERT U. FEIBELMAN,
Solicitor for Complainant.

398 In Circuit Court of Leon County

No. 3111 and No. 3171

[Title omitted.]

Order of Court on Application for Supersedeas Filed Nov. 5, 1934

This cause coming on this day to be heard upon the application of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, for an order of supersedeas for appeal to the Supreme Court of the State of Florida from that certain decree entered in the above styled and entitled cause on the 27th day of October 1934, and recorded in Chancery Order Book 11, page 464, and the Court having considered the same, as well as the argument of counsel for the petitioner, and the Court not being fully advised in the premises.

It is Considered, Ordered, Adjudged, and Decreed that the petitioner do have until twelve o'clock noon, Saturday, November 10th, 1934, in which to further acquaint the Court with the phases
399 and features of the order appealed from at which the said petitioner is aggrieved, which the Court considers necessary in order to determine the question of whether or not the supersedeas applied for should be granted, as well as the terms and conditions thereof.

The Receiver is, therefore, ordered and directed to withhold the distribution of any funds in his hands and custody as Receiver, pending the further order of this Court.

Done, Ordered, Adjudged, and Decreed in Chambers, At Tallahassee, Florida, this 5th day of November, A. D. 1934.

J. B. Johnson.
Circuit Judge.

400 In Circuit Court of Leon County

Consolidated—No. 3111

[Title omitted.]

Motion for order to open deposition of the witness, Pierre P. Garven

Filed Nov. 24, 1934

Comes now William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, Complainant, and moves the Court for an order directing the Clerk of this Court to open the deposition of the witness, Pierre P. Garven, and to mark the same, filed in evidence.

(Signed) Herbert U. Feibelman,
Solicitor for Complainant.

401 In Circuit Court of Leon County

Consolidated—No. 3111

[Title omitted.]

Order directing clerk to open deposition of the witness, Pierre P. Garven

Filed Nov. 24, 1934

This cause coming on to be heard this day upon the motion of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, for an order to open the deposition of the witness, Pierre P. Garven, and the Court being fully advised in the premises, it is

Ordered that the said motion be, and the same is hereby granted and the Clerk of this Court will open the deposition and mark the same, "Filed in Evidence, Complainant's Exhibit 1", as of the date the said deposition is opened.

Done and ordered in Chambers at Tallahassee, Leon County, Florida, this 24th day of November, A. D. 1934.

(Signed) J. B. JOHNSON,
Circuit Judge.

402 In Circuit Court of Leon County

Consolidated—Nos. 3111 and 3171

[Title omitted.]

Depositions de bene esse

Filed Nov. 23, 1934

STATE OF NEW JERSEY,
County of Essex, ss:

The examination of witnesses de bene esse, beginning on the 19th day of November 1934, on behalf of the complainants, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, and The London Operating Company, a Florida corporation, before the undersigned, Meyer Q. Kessel, a Notary Public of New Jersey, 1060 Broad Street, Newark, New Jersey, in a certain cause now pending in the Circuit Court of the 2nd Judicial Circuit in and for Leon County, Florida, in Chancery, Consolidated, No. 3111, wherein the said William H. Kelly, as Commis-
403 sioner of Banking and Insurance of the State of New Jersey, and The London Operating Company, a Florida corporation, are complainants, and W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of the State of Florida, and New

Jersey Fidelity & Plate Glass Insurance Company, a corporation organized under the insurance laws of the State of New Jersey, are defendants, at which examination there were present Saul Nemser and William Donnolly, Counsel for John Milton, appearing in behalf of Herbert U. Feibelman, a member of the Bar of Florida, Solicitor for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, and Harlan Besson, United States District Attorney for the District of New Jersey, appearing for the United States of America.

Pierre P. Garven, a witness produced in behalf of the complainant, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, being first duly sworn, deposes and says as follows:

Direct examination by Mr. SAUL NEMSER:

Q. Where do you live, Mr. Garven?

A. Bayonne, New Jersey.

Q. You are over twenty-one years of age?

A. Yes, sir.

Q. You are a practicing Attorney and Counsel at Law of the State of New Jersey?

A. Yes, sir.

Q. You have been for how long?

A. An Attorney thirty-six years and over and Counselor thirty-three years.

Q. Where is your law office located?

A. 30 Journal Square, Jersey City, New Jersey.

Q. Are you familiar with the laws affecting the liquidation of the assets of the New Jersey Fidelity & Plate Glass Insurance Company?

A. I am.

Q. The defendant in this case?

A. Yes.

404 Q. And do you know that Mr. William Kelly, Commissioner of Banking and Insurance of the State of New Jersey, is the Liquidator of the Company?

A. I do.

Q. And has been since May 28th, 1932?

A. Yes, sir.

Q. Now what opportunity have you had, Mr. Garven, to familiarize yourself with the New Jersey law on the subject of the liquidation of this particular company?

A. The general practice of law for that period of time which I stated, and a special study of the liquidation statutes and the New Jersey opinions construing them.

Q. Are you truly familiar with the tenure or effect of the New Jersey laws which I have just referred to?

A. I am.

Q. Can you state what laws existed in the State of New Jersey, and by the authority of which the Commissioner of Banking and Insurance is liquidating the assets of the New Jersey Fidelity & Plate Glass Insurance Company, since May 28th, 1932?

A. Yes. The General Insurance Law of 1902, which you will find in 2 Compiled Statutes, and the amendment to Section 56, which is Chapter 244 of the Laws of 1931.

Q. Can you give us, Mr. Garven, the exact title of the Insurance Act?

A. The exact title is, "An Act to provide for the regulation and incorporation of insurance companies, and to regulate the transaction of insurance business in this State." Approved April 3rd, 1902, which is also Chapter 134 of the Laws of 1902, 2 Compiled Statutes, 2836, and Section 56 of that act was amended by Chapter 244 of the Laws of 1931, and particularly Section 56 A of the Insurance Laws, entitled "Proceedings against insolvent or unsafe Companies."

Q. Section 56 A then, is the liquidation section of the Insurance Laws?

A. Yes.

405 Q. Can you tell us the general tenure of legal affect of these laws, insofar as the Commissioner of Banking and Insurance is concerned?

A. The Commissioner of Banking and Insurance has power under that Act to take possession of all the property and business of the Insurance Company, speaking of this particular Insurance Company.

Q. And without any Court order or any legal order of any kind or character?

A. All the power and jurisdiction of the Commissioner is found under that Act. It has no other authority outside of that. The trust estate which is created is in the custody of the Commissioner, and not of any Court.

Q. The administration of the trust is left to the Commissioner?

A. Subject to certain checks, by the Court of Chancery. This Section 56 A as amended by Chapter 244 of the Laws of 1931, has been construed in the case of Smith vs. Washington Casualty Company, 110 N. J. Equity, 122; 159 Atlantic, 510. In this particular case, however, I am reliably informed and state as a fact that the New Jersey Fidelity & Plate Glass Insurance Company requested the Banking Commissioner to take possession of its property in May 1932.

Q. So, therefore, Mr. Garven, there can't be any question that the Commissioner of Banking and Insurance of the State of New Jersey was in possession of the property and business of the New Jersey Fidelity & Plate Glass Insurance Company, on December 19th, 1932?

A. The Commission was in possession.

Q. And has been in possession since 1932, and to the present time?

A. So far as I know.

Q. You have just testified that under the statute the Commissioner does not require any Court order or Court approval before he takes possession. The fact is that it is a statutory trust committed
406 to the Commissioner, and the only way the Courts interfere is under the statute; that is, by certain checks as you call it. Can you tell us right now what particular things the Court of Chancery has power to check the Commissioner on?

Objection by Mr. HARLAN BESSON. I think that the statute itself ought to be produced. The statute itself is the best evidence of the state of the law.

By Mr. NEMSER. I will withdraw my last question. Strike it out.

Q. I'll show you, Mr. Garven, a pamphlet of the Insurance Laws of the State of New Jersey, and ask you whether the laws as therein contained are the Insurance Laws to which you have reference. I present this pamphlet into evidence, and let it be marked Exhibit "A."

By MEYER Q. KESSEL, Notary Public. Let it be so marked.

(Mr. Pierre P. Garven signed his name on the front cover of the pamphlet.)

Q. Mr. Garven, I refer you to Page 40 of the Exhibit "A" and ask you if Section 56A which you have referred to in your testimony, is the liquidation section of the statute.

A. Yes.

Q. Mr. Garven, you have written your signature on the cover of this Exhibit "A" for the purpose of identification?

A. Yes, Sir.

Q. And the Insurance Laws of New Jersey as manifested by Exhibit "A" were the Insurance Laws in effect at the time the Commissioner took possession of the New Jersey Fidelity & Plate Glass Insurance Company on May 28th, 1932?

A. Yes.

Q. Are the laws still in effect as far as you know?

A. Yes.

Q. Are you familiar with the assets which the Commissioner of Banking and Insurance of New Jersey has in his charge and which he is liquidating under the Insurance Laws, and are you familiar with the liabilities of the New Jersey Fidelity & Plate Glass
407 Insurance Company and the claims as filed in the State of New Jersey?

A. No. I am not familiar with either the assets or the liabilities. That is a matter which Mr. T. A. McNicholas, Special Deputy Commissioner of Banking and Insurance is familiar with. I understand that information can be gotten from him.

Q. Do you know whether or not any statute, law, legislation or Court order exists in the State of New Jersey, whereby claims arising against the New Jersey Fidelity & Plate Glass Insurance Company in Florida will not be accorded the same consideration as is accorded the claims arising in New Jersey, or in any other State than Florida?

A. There is not.

Q. Can you elaborate upon—can you tell us what laws are laid down by the New Jersey Courts in regard to liquidation of assets, such as in this case, with respect to nonresident creditors?

A. Our Courts have always followed the law that equality is equity, and there is no law in New Jersey which permits discrimination against nonresident creditors. They are on the same par or parity as domestic creditors.

Q. Are there any provisions in the New Jersey Insurance Laws creating any special fund or deposit for the benefit of New Jersey residents in case of insolvency of the Company?

A. No. Not in this State. There is not.

Q. So then, as you take it, Mr. Garven, there is nothing in the Insurance Laws of New Jersey which grants a preference in any way, manner, shape or form, which discriminates or gives preference over a foreign creditor. Can you cite any authorities or cases in New Jersey regarding this, as you have testified?

A. Yes. Three cases. Irvin vs. Gran'te State Provident Association, 56 N. J. Equity, 244; 38 Atlantic, 680. Clark vs. Painted Post Lumber Company, 89 N. J. Equity, 409; 104 Atlantic, 728. Engineering Co. vs. Perryman Electric Company, 113 N. J. Equity, 255; 166 Atlantic, 461, affirmed on appeal, 114 N. J. Equity, 51; 168 Atlantic, 298.

408 Q. Now, Mr. Garven, you intend to say that a reading of these cases will indicate that residents of the State of Florida or any other State, are treated on a par and parity with residents of New Jersey in liquidation of insolvent assets, and also the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. Were the Insurance Laws of New Jersey, as manifested by Exhibit "A" in force and effect in New Jersey at the time the New Jersey Fidelity & Plate Glass Insurance Company deposited some $75,000.00 worth of securities with the defendant, W. V. Knott, State Treasurer of Florida?

Objection by Mr. BESSON. I object because nothing has been shown that the witness has any knowledge whatever of the affairs of the Company in question, nor any knowledge in order to give specific dates.

By Mr. NEMSER. Possibly I can reframe that question.

Q. Were the Insurance Laws of New Jersey as shown by Exhibit "A" in force and effect on April 1st, 1930?

A. The General Insurance Law was in effect on that date. Subsequently, in 1931, that liquidation section was amended.

Q. As you testified, in Chapter 244, Laws of 1931?

A. Yes.

Q. Mr. Garven, do you know whether under Section 56 A, the Commissioner of Banking and Insurance administers this trust without any Court order?

A. Subject to check in certain instances.

Q. Do you know whether Section 56 A provides that the Court of Chancery has the final say on the costs and expenses of liquidations by the Commissioner?

A. It has.

Q. And of distribution to creditors?

A. It has.

Q. And final disposition of the assets?

A. It has.

Cross-examination by Mr. BESSON:

Q. Now, this Act in question became effective on April
409 27th, 1931, did it not?

A. Yes.

Q. Could you say whether or not, at the same time that this Act was passed regulating Insurance Companies, there was another Act passed? A companion Act containing substantially the same sections relating to Trust Companies?

A. Yes.

Q. Now, directing your attention to the Act in question. Is it under any condition that an Insurance Company of the State can be taken over by the Commissioner?

A. No.

Q. It is only, first, when the Company becomes insolvent?

A. Right.

Q. And second, where it suspends its ordinary business for want of funds to carry on the same?

A. Right.

Q. And third, that whenever the Company as result of an examination—I withdraw that. Third, whenever the Commissioner of Banking and Insurance shall ascertain as the result of an examination as authorized by the Act in question, that is the Act which has been offered in evidence, as the result of an examination authorized by that Act, or in any other manner, that any such Insurance Company is exceeding its powers, or violating the law, or that its condition or methods of business are such as to render the continuance of its operations hazardous to the public or its policyholders.

A. Yes; that's true.

Q. Do you know whether or not the Company in question was a stock Insurance Company?

A. I have no knowledge.

Q. If it was a stock Insurance Company, would you say that the provisions of this Act permit the Banking and Insurance Commissioner to take over the Company in such case, if its assets, after charging it with an amount requisite for the reinsurance of all
410 its outstanding risks, and with its other liabilities, including capital stock up to the minimum amount required by this Act, amount to less than the minimum amount of capital stock?

A. That's the condition.

Q. You don't know just what sort of Company this was?

A. No.

Q. Now the power of the Commissioner is to take possession of the property and business of the Company in any one of these situations enumerated?

A. Right.

Q. And retain possession of the Company until it shall have resumed business, or its assets be finally liquidated, as provided in the Act?

A. Right.

Q. Now, no proceedings can be taken against the Commissioner beyond judgment?

A. Right.

Q. And the corporation continues in existence, but the Commissioner operates the Company. Is that correct?

A. Yes. He takes possession, and conducts the business in the name of the Company.

Q. And everything is done in the name of the Company, and not in the name of the Commissioner?

A. Right.

Q. Has there been any case to your knowledge where an application was made to the Court of Chancery to turn the assets of a Company over to a Receiver appointed by the Court, not under that section?

A. What about this case of Smith vs. Washington Casualty Company, 110 Equity? That's construing the powers and the constitutionality of 56 A. As to receivership, you will find
411 that Section B of that Act relates to the Receiver. That's where the Commissioner refuses to take over the property.

By Mr. KESSEL. You mean 56 B?

A. Yes.

Q. In the case where the Commissioner has taken over the property, in Smith vs. Washington Casualty Company, 110 N. J. Equity. it cites that the Court has no power to act.

A. The Court has power in eight or nine different subjects. You will see——

Q. Page 129 of that opinion. 110 N. J. Equity, Page 122–129. Now, in this particular case, could you state whether or not, if you know, if this company was taken over by resolution at the request of the Board of Directors?

A. I am reliably informed that it was.

Q. You have also examined the annotations to discover what other decisions have been made with reference to this Act?

A. Only as it relates to 56A.

Q. Well, them, you haven't read the cases as reported in 109 Equity, 483 and 111 Equity, 246?

A. I recollect it as just a special reference.

Q. That merely would refer to the Act, but would have no pertinency in construing the language of the Act, or would not conflict in any way with the testimony you have given?

A. They would not. This Act——

Q. Now, this opinion in 110 N. J. Equity, was written by Vice Chancellor Berry and handed down on February 29th, 1932?

A. Yes.

Q. In another phase of the same case, on January 2nd, 1932, there was another opinion handed down by Vice Chancellor Buchanan, was there not?

A. Yes.

Q. That's this particular case, isn't it?

A. Yes.

Q. Well, originally Vice Chancellor Buchanan, on a petition for advice and instruction, denied that the Court of Chancery had any jurisdiction. I refer, to refresh your recollection, to Washington Casualty Co., 158 Atlantic, 331.

412

A. Right.

Q. Which is also recorded in 109 Equity, 483. Now in a later decision relative to the Companion Trust Company Act I mentioned before, not a later decision, but a decision about that time, January 29th, 1932, the particular case being Smith Commissioner of Banking and Insurance, vs. Monmouth Title & Guaranty Co., Vice Chancellor Buchanan also held that the Court of Chancery had no jurisdiction to appoint a receiver where the Commissioner made application therefore and had declined to act.

A. Right.

Q. You are aware of the decision of Vice Chancellor Fallon, in which he took a different view?

A. No.

Q. An unreported decision in which he actually did appoint Mr. Milton and another as trustees, or rather as receivers, to take over a company located in Bergen County?

A. No.

Q. And could you say whether or not, if you know a decision under the Companion Act involved the Fidelity Title and Guaranty Co. of Ridgewood, New Jersey, in which an opinion was rendered sustaining the authority of the Court to appoint such Receiver by Vice Chancellor Fallon?

A. No.

Q. I just wanted to direct your attention to this opinion by Vice Chancellor Fallon, of which you know nothing?

A. No.

Q. And now, Mr. Garven, if I tell you this case I have in mind was never officially reported, and assuming that to be the fact, have you ever made any search for authorities concerning this other than these cases officially reported? You mean your search has been confined to the official reports?

413 A. Yes. To the official reports, and to the methods of the practitioners of the Bar. I investigated the law of the liquidation statutes and all opinions relating to that law as it applied to this New Jersey Fidelity & Plate Glass Insurance Company.

Q. Now, Mr. Garven, you never, however, made any search for any unrecorded opinion of the Court of Chancery construing this Act?

A. I did.

Q. Did you?

A. Yes.

Q. Well, did you come across the case involving the Fidelity Title and Mortgage Guaranty Company of Ridgewood?

A. I came across it, but not as relating to this Act.

Q. Did you ever read it carefully?

A. I wuldn't say carefully, so as to give an opinion.

Q. Where did you get this copy of the opinion that you mentioned you read?

A. I didn't mean to infer that I had testified that I had actually seen that opinion. I had investigated to see whether or not there were, or rather I had my office look and see if there were any reported cases or unreported cases. In other words, I had a thorough investigation made, and I found nothing affecting this statute other than what I have testified to.

Q. And you never read an opinion answering the description that I have given? That is, an opinion by Vice Chancellor Fallon involving the Fidelity Title and Mortgage Guaranty Company of Ridgewood, New Jersey, and expressing a view contrary to that taken either by Vice Chancellor Buchanan or Berry?

A. No.

Redirect examination by Mr. SAUL NEMSER:

Q. Is there anything you found in your search of the law that would indicate that a nonresident of New Jersey would not be treated on a par and parity with a resident of New Jersey, or do-
414 mestic creditors, in the liquidation of the assets of the Insurance Company, such as the New Jersey Fidelity & Plate Glass Insurance Company?

A. I have no knowledge which would allow discrimination.

Q. Mr. Garven, may I call your attention to a pamphlet purporting to contain the Insurance Laws of 1933 and 1934, supplementing Exhibit A, particularly Chapter 249, Laws of 1933, and ask you whether this pamphlet contains amendments and *d*upplements to the Insurance Laws of 1933 and 1934?

A. That is a supplement.

Q. You have seen Exhibit A which purports to be the Insurance Laws of 1932, and now I show you a pamphlet which appears to contain Insurance Laws for 1933 and 1934, and ask you whether that pamphlet actually contains such laws.

A. I ran down the statutes of 1933 and '34 and found no statute which affects 56 as amended by the laws of 1931.

Q. I will ask you to sign your name on these Laws purporting to be the Laws of 1933 and 1934, for the purpose of identification, and it will be marked "Exhibit B."

By MEYER Q. KESSEL. Let it be so marked.

(Pierre P. Garven signed his name on the front cover of this pamphlet.)

By Mr. HARLAN BESSON. These publications are authorized by whom? Through what agency?

By Mr. SAUL NEMSER. I am offering into evidence a pamphlet gotten up by the Banking and Insurance Department of the State of New Jersey, applicable to Insurance Companies for the years 1933 and '34, which the witness has written his signature upon for the purpose of identification.

By Mr. HARLAN BESSON. I have no objection on the assumption that it has been prepared under the authority of the Banking and Insurance Department, and copied correctly from the laws or statutes, or at least from the volumes of the statutes of the State of New Jersey.

415 By MEYER Q. KESSEL, Notary Public. I will allow into evidence, for the purpose of clearing up any uncertainty at this time, the pamphlet of Insurance Laws, marked "Exhibit B." It is formally offered into evidence and allowed by me.

By Mr. HARLAN BESSON. Upon the assumption that they are correct copies of the laws in question, as enacted by the legislation of the State of New Jersey for the respective years in question.

Sworn to and subscribed before me this day of November 1934.

A Notary Public of New Jersey.

STATE OF NEW JERSEY,
County of Essex, ss:

Timothy A. McNicholas, a witness produced in behalf of the complainant, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, being first duly sworn, deposes and says as follows:

Direct examination by SAUL NEMSER:

Q. Where do you live, Mr. McNicholas?

A. South Amboy, New Jersey.

Q. You are the Special Assistant Deputy Commissioner of Banking and Insurance of the State of New Jersey?

A. Yes.

Q. In charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. Where is your office?

416 A. 31 Clinton Street, Newark.

Q. New Jersey?

A. New Jersey.

By Mr. HARLAN BESSON. I would like to note that the notice was limited to a single witness. I am going to be present here and I

do not want my presence construed as a waiver of the rights of the United States on the form of notice that has been given. My plan is to participate in the examination so that in the event United States District Attorney Holland in Florida wants to withdraw any objection to the use of this testimony, he may do so. Do you understand, Mr. Nemser?

By Mr. NEMSER. I understand thoroughly.

Q. Mr. McNicholas, do you know the circumstances under which William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, took possession of the property and business of the New Jersey Fidelity & Plate Glass Insurance Company on May 28th, 1932?

A. Yes.

Q. What were those circumstances?

A. He was requested to take possession of the business and property by a resolution by the Board of Directors.

Q. Of the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. Is this a copy of the resolution [submitted a schedule]?

By Mr. HARLAN BESSON. May I see it?

A. That is a copy of the resolution.

Q. Have you seen the original?

A. Yes.

Q. In the minute book of the Company?

A. Yes.

Q. This will be marked "Exhibit C."

By Mr. HARLAN BESSON. Subject to my appearance here.

A. For the purpose of identification I have written my name across the resolution.

417 By Mr. MEYER Q. KESSEL, Notary Public. Is it offered into evidence?

By Mr. SAUL NEMSER. Yes.

By MEYER Q. KESSEL, Notary Public. Be allowed. Exhibit C.

Q. How long have you been connected with the Department, Mr. McNicholas?

A. Since 1923.

Q. In what capacity?

A. Examiner, Assistant Chief Examiner, and Special Assistant Deputy Commissioner.

Q. Are you familiar with the Insurance Laws of New Jersey?

A. Yes.

Q. Especially with the liquidation section 56 A?

A. Yes.

Q. As amended by Chapter 244, Laws of 1931?

A. Yes.

Q. Under the Insurance Laws, did the Commissioner of Banking and Insurance take possession by authority of any Court order?

A. No.

Q. What are the proceedings? How do you go about it?

A. Upon receiving orders from the Commissioner to do so, a Deputy steps into the Company and informs the officers that the Commissioner is in possession, and posts a notice on the doorway or entrance to the Company office, which is information to the general public that the Commissioner has taken possession of the business.

Q. That's the only physical evidence of his taking possession?

A. That's all.

Q. How about the banks and the checks?

A. The banks and anyone else in possession of any assets are immediately notified.

Q. Do you know whether the New Jersey Fidelity & Plate Glass Insurance Company had a deposit with the Banking and Insurance Department?

A. I think it had.

418 Q. How much?

A. $364,000.00. Par value.

Q. Of what?

A. Municipal or government bonds.

Q. Was that deposit made under the Insurance Laws as shown by Exhibit A?

A. It was.

Q. And can yol tell us why the deposit was in that particular amount?

A. Yes. The deposit required of domestic Companies is only $50,000.00 However, Companies which are doing business in other jurisdictions are sometimes required to make larger deposits to comply with the requirements of those other jurisdictions, and under our laws we are permitted to accept such deposits in order to permit the Companies to qualify in such jurisdictions.

Q. That's how the New Jersey Fidelity & Plate Glass Insurance Company was compelled to deposit the sum of $360,000.00 in securities?

A. Yes.

Q. And may I call your attention to Paragraphs 6, 7, 8, 9, 10, and 11, of the Insurance Laws of the State of New Jersey, as shown by Exhibit A, beginning with Page 12 thereof, to and including Page 16, and ask you whether those sections are the ones that provide for the capital of domestic companies and securities thereunder?

A. Yes.

Q. Is there anything in the Insurance Laws of the State of New Jersey whereby this deposit of $360,000.00 put up by the New Jersey Fidelity & Plate Glass Insurance Company is for the benefit of the New Jersey Fidelity & Plate Glass Insurance Company?

A. No.

419 Objection by Mr. HARLAN BESSON. I object to this, on the ground that the statute speaks for itself.

Q. Your answer is no?

A. It is no.

Q. Is this deposit for the benefit of all creditors of the New Jersey Fidelity & Plate Glass Insurance Company, regardless of residence?

A. It is.

Q. Do you know of anything in the Insurance Laws, either by way of statute, order, rule, or regulation, which discriminates in favor of New Jersey resident creditors as against nonresident creditors?

A. I do not.

Q. In your experience have you seen any preference shown to New Jersey creditors?

A. I have not.

Q. Since May 28th, 1932, what have been the Commissioner's acts? Is he liquidating the Company, or trying to put the Company into such shape as to do business?

A. He is liquidating it.

By MEYER Q. KESSEL. You are speaking with reference to the Company in question?

By Mr. NEMSER.

A. Yes. The New Jersey Fidelity & Plate Glass Insurance Company.

Q. May I show you what purports to be a copy of an order entered on October 27th, 1934, in the Circuit Court of the Second Judicial Circuit in and for Leon County, State of Florida, in Chancery, in a cause entitled "The London Operating Company, a Florida corporation, complainant, vs. New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, et als., defendants," in which are listed certain claims including the claim of Dade County,
420 Burbridge Realty Co., Jay-Thorpe, Inc., Hernando State Bank, Paul D. McGarry, & John C. Sullivan, First State Bank Eustis, Barnett National Bank of Jacksonville, E. W. Yandre, Pearce Produce Company, London Operating Company, and to which reference is made to the relative rights of the United States and to the claims of Snedigar & Baya, N. R. Robinson, and Joseph M. Schlesinger. I ask you whether the creditors whose names I have mentioned have filed claims with William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, here in New Jersey?

A. All with the exception of those of Dade County.

Q. In your official capacity, are you familiar with the assets and liabilities of the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. Do you make regular reports as to the condition of the Company?

A. When the Commissioner asks for them we make the reports.

Q. When was the last report that you made?

A. May 28th, 1934, which has not yet been filed.

Q. Can you tell us from that report what the assets were as of that date?

A. Yes. The assets at that time had a book value of $3,502,368.45.

Q. What did those assets consist of?

A. Do you want that in detail?

Q. No. General nature.

A. Cash about $250,000.00; receivables of various kinds about $160,000.00; State, County, and Municipal bonds $1,000,000.00.

Q. Are those bonds quoted on the New York Stock Exchange?

A. No. Most municipals are not mentioned on the exchange. They are what we call "over-the-counter securities." About $1,000,000.00 worth of first mortgage loans on real estate; one quarter of a million of real estate; the balance of the assets consist of various orders, and there is included assets in the hands of ancillary receivers.

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Q. Now these bonds which you say have an over-the-counter market, is there any difficulty of disposing of them for cash if you so desire?

A. No. Mostly New Jersey Municipals.

Q. Tell us what the liabilities were of that date.

A. The total amount of claims filed with the primary liquidator, $59,821,264.87.87.

Q. Filed with the Commissioner right in Newark?

A. Yes.

Question by witness: Do you want the claims which have been approved? $677,000.00 approximately; the claims which were rejected are $4,650,000.00 approximately. There is still in the process of adjustment claims amounting to about $54,000,000.00.

Q. How many claims in number?

A. 4,729.

Q. Practically most of your time is being spent in the adjudication of these claims?

A. To a large extent.

Q. Based upon your experience in the adjudication of claims, so far as you can tell, what percentage would there be of rejections and approvals of the New Jersey Fidelity & Plate Glass Insurance Company, as to the amount of claims allowed?

Objection by Mr. HARLAN BESSON. Objected to on the ground that there is no basis for any such prophetic statement.

A. You have to keep in mind that a lot of those not yet disposed of are contingent claims, possibly $35,000,000 of the $54,000,000 of them are contingent.

Q. What do you mean?

A. Not matured claims. Claims based on guarantees, and where liability against the Company has not matured.

422

Q. And some which may never mature?

A. Which may never mature possibly. Bearing that in mind, the first guess I can make is that the claims as ultimately allowed will be somewhere between ten and fifteen million dollars.

Q. Now did this New Jersey Department enter into any agreement with Departments of any other States regarding liquidation of the assets of this Company?

A. Yes. With the Insurance Department of the State of New York.

(Continuation of answer) and of Pennsylvania.

Q. What is done under these agreements?

A. The agreements provide generally that the ancillary liquidator will collect the assets and advertise the claims within their jurisdiction, and that they will then remit to the primary liquidator the assets less their expenses, and the claims after they have been adjudicated go to share in the general distribution.

Q. Do you know in how many States the New Jersey Fidelity & Plate Glass Insurance Company was authorized to transact business?

A. Thirty-five. Do you want the names?

Q. No. Thirty-five States in the United States?

A. Yes.

Q. Did the Commissioner of Banking and Insurance advertise in those States?

A. Yes.

Q. In how many States did you advertise?

A. I would say thirty or thirty-one. He did not advertise in States where ancillary receivers had been appointed by the Courts.

Q. What are they?

A. Illinois, Minnesota, Missouri, West Virginia, Pennsylvania.

Q. How about Maryland?

423 A. Maryland is right. I am not sure of that because some of these receivers were appointed after our advertising was finished.

Q. Now did the New Jersey liquidator advertise for claims in the State of Florida?

A. Yes.

Q. In what papers?

A. I don't recall the names. Miami papers.

Q. The Miami Herald?

A. I don't remember the name.

Q. What are the dates the Commissioner advertised?

A. I don't remember the dates precisely, but it was some time during the last six months of 1932, and the advertisement would appear weekly for thirteen consecutive weeks as required by our statute.

Q. Can you tell us what the New Jersey liquidators expended in advertising?

A. In the neighborhood of $5,000.00.

Q. Can you tell us when the New Jersey Fidelity & Plate Glass Insurance Company deposited the securities with the State Treasurer of Florida as a condition precedent to doing business in that State?

A. I don't recall exactly. During 1930.

Q. How much was the deposit?

A. $75,000.00 in bonds of the State of Vermont.

Q. Do you know when the New Jersey Fidelity & Plate Glass Insurance Company was chartered?

A. 1868.

Q. Do you know under what Act?

A. A special Act of the legislature.

Q. Do you know whether this charter has been amended?

A. Yes. There were various amendments to the charter, the most important one of which was in 1923, when they filed an amended certificate of incorporation under the provisions of the General Insurance Laws which had been enacted since they were first organized.

Q. Mr. McNicholas, what provisions or rules or regulations
424 has the Commissioner in regard to claims that are disposed of insofar as giving creditors opportunity for hearing?

A. So far as possible, we dispose of disputes by correspondence, and when that is impossible they set a date for a hearing at which either the claimant or his attorney appears. The laws give us authority to compromise on claims, which we do after a hearing. We go to the greatest possible extent to give all creditors every possible chance to prove their claims.

Q. Have you in your experience liquidated any other Insurance Companies other than the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. What Company was that?

A. The only one which I have completed is the Washington Casualty Insurance matter.

Q. Was that a corporation of New Jersey?

A. It was.

Q. Were there any nonresident creditors in that case?

A. There were.

Q. Approximately how many?

A. Comparatively few in number. I would say there were possibly ten or fifteen New York creditors in that Company.

Q. Can you give us an idea as to the aggregate amount of claims off-hand?

A. I can't.

Q. Were they treated on a par and parity with New Jersey creditors?

A. They were.

Q. How much were they paid?

A. 100%.

Q. Same as New Jersey creditors?

A. Same as New Jersey creditors.

Cross-examination by Mr. HARLAN BESSON:

425 I direct your attention again to that Exhibit C which was offered in evidence, and ask you if you know under what portion or under what language of 56 A, which is Chapter 244 of the

Laws of 1931, the Commissioner exercised authority to take over the affairs of this Company?

By MEXER Q. KESSEL. What page is that?

By Mr. HARLAN BESSON. I am directing the witness' attention to Page 40 of the pamphlet marked "Exhibit A." He took possession in this case, first, because he was requested to do so by the Board of Directors as shown in this resolution.

A. But their action was based on the hazardous condition of the Company.

Q. I know, but will you point to the portion or language as you know of the statute, under which jurisdiction was taken to act?

A. I would say under these provisions. "Whenever the Commissioner of Banking and Insurance shall ascertain as a result of an examination as authorized by this Act that the Company's condition or methods of business are such as to render the continuance of its operations as hazardous to the public or to its policyholders." I know that he did make such an examination.

Q. And that the request set forth in this resolution, Exhibit C, is what prompted the action of the Commissioner?

A. I would say that was what culminated the transactions.

Q. Well, the Commissioner had made an examination prior to the execution of the resolution?

A. That's right.

Q. And warned the Company that its condition was hazardous?

A. That's right.

Q. And took the Company or the complete matter into possession.

A. Correct.

Q. Prior to that it re-insured its risks? All of its risks?

A. It did, but not all. There were some exceptions.

Q. The Re-Insuring Company was the Commercial Casualty
426 Insurance Company?

A. Yes.

Q. Is that Company still in existence?

A. Yes.

Q. It has not been absorbed by any other Company?

A. Yes.

Q. Was it doing business under its charter in the State of New Jersey and other parts of the United States?

A. Yes.

Q. The New Jersey Fidelity & Plate Glass Insurance Company transferred, or rather the New Jersey Fidelity & Plate Glass Insurance Company at New Jersey transferred to the Commercial Casualty Insurance Co., a great part of its assets, didn't it?

A. Yes.

Q. To what amount, if you know?

A. Approximately one million dollars.

Q. Now, when it had transferred those assets, how much money still remained on deposit with the Commissioner in the State of New Jersey?

A. You mean security?

Q. An attempt to transfer any of the assets deposited with the Commissioner of Banking and Insurance of the State of New Jersey.

A. No. It did not attempt to do that.

Q. Was any transfer in fact permitted by the Commissioner?

A. That question was not raised.

Q. But has been in other cases?

A. Yes.

Q. Directing your attention to the provisions of Section 8, which is Page 14 of the pamphlet marked Exhibit "A", there is a requirement that a Company engaged in business under the Insurance
427 Act must make a deposit of certain types of securities with the State Commissioner of Banking and Insurance?

A. That's right.

Q. These deposits are maintained, in Section 10 of the same Act, Page 16, for the benefit of policyholders?

A. That's right.

Q. That is, all the policyholders of the Company?

A. All the policyholders.

Q. Now, to what extent do the policyholders have a preference as against the assets of the Company, do you know about that?

A. I don't know that I can answer that.

Q. Well, you have said that all creditors came on an even basis.

A. That is right. In practice when a Company is in liquidation, those assets in all cases that I am familiar with, have been turned over as general assets.

Q. So the policyholders have no power whatsoever?

A. No after the Company has failed.

Q. That deposit is more of a condition precedent to getting a license to do business. You know of no Court having passed upon that?

A. No.

Q. Have you ever been advised by your counsel on the subject?

A. No. The only case where we have used the security in a liquidation which I handled, was a Company which paid all its claims in full, so that no question of preference ever arose.

Q. I see. Well now, how much is the deposit of securities in this particular case that was made with the State Commissioner of Banking and Insurance, under the provisions of Section 8 of the Insurance Act?

A. When we took possession it was $364,000.00, and it has since been reduced by $11,000.00 which matured, the Commissioner,
428 however, continuing to hold that $11,000.00 with the remaining securities.

Q. So that there is a fund of $364,000.00 which had its origin with this deposit of securities?

A. Yes.

Q. Which may or may not be for the benefit of policyholders?

A. Yes.

Q. Now, do you know what deposit was made for the benefit of policyholders in other States by the same Company, the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. What was the deposit made in Florida?

A. $75,000.00 worth of bonds of the State of Vermont.

Q. And that is the fund which is in part the subject of controversy here?

A. Yes, sir.

Q. Have you ever heard in any of the proceedings that you have been conducting regarding the liquidation of these companies, this company, or any other company, under the Insurance Acts, of an application for a preference? Under the provision of Section 10 of the Insurance Act? Page 16 of the Pamphlet?

By MEYER Q. KESSEL. That is Exhibit A.

A. There is a proceeding pending now in the Public Indemnity Company, in which a judgment creditor is asking preference against the fund deposited with the Commissioner.

Q. But I refer particularly to a claim by a policyholder?

A. This is a policyholder who has reduced his claim to judgment.

Q. And he is asking preference?

A. Yes.

Q. Now, this Exhibit C, the resolution, is practically an assignment, is it not, to your Company for the benefit of the creditors of the New Jersey Fidelity & Plate Glass Insurance Company?

A. I think so.

429 Q. And then all of the assets of the Company, with the exception of those turned over to the Commercial Casualty Insurance Company, were turned over to the State Banking and Insurance Commissioner, Mr. Kelly?

A. Yes.

Q. Now; you have had cases where the United States made a claim for a preference under Section 34 66, haven't you?

A. Yes.

Q. No definite ruling has been made in any of these cases?

A. No.

Q. I limit that one to Insurance Companies at the present time. You have had applications in this?

A. We haven't in this Company.

Q. You have made no ruling as yet?

A. No.

Redirect examination by Mr. SAUL NEMSER:

Q. What did the New Jersey Fidelity & Plate Glass Insurance Company get in return for the one million dollars given to the Commercial Casualty Insurance Company?

A. The Commercial Casualty agreed to assume its liabilities amounting to about a million and one-half, plus an undetermined amount of contingent liabilities arising out of the contract.

Q. Did the New Jersey Fidelity & Plate Glass Insurance Company gain or lose?

By Mr. HARLAN BESSON. Objected to.

A. I would say gained.

Q. How much?

A. Between $400,000.00 and $500,000.00.

Q. Do you carry the securities deposited with the Commissioner in the sum of $364,000.00 as general assets on your books?

A. Yes.

Q. Books of liquidation of the Company?

430 A. Yes.

Recross-examination by Mr. HARLAN BESSON:

Q. At the time this Company was taken over by the State Commissioner, was it in your opinion and in the opinion of the Department, speaking as a Deputy Commissioner of Banking and Insurance, was this Company, the New Jersey Fidelity & Plate Glass Insurance Company, an insolvent corporation?

A. I don't know that I could say whether it was insolvent or not. Its condition was hazardous.

Q. It couldn't conduct business?

A. Not with the consent of our Department.

Q. It did not have sufficient capital, did it, to continue business?

A. Yes; it had sufficient capital. It was more a question of cash.

Q. It didn't have the cash to carry on the business?

A. That's right.

Q. And how long after this request that was made in the matter, was the resolution made?

A. On May 28th, 1932.

Q. Was the Company taken over by the State Commissioner of Banking and Insurance?

A. The same day.

Redirect examination by Mr. SAUL NEMSER:

Q. Saturday, May 28th, 1932?

A. We took possession at the close of business, which happened to be at noon, Saturday.

Q. As a matter of fact, the examinations by the State Banking and Insurance Department of this Company were conducted for a period of months prior to May 28th, 1932?

A. That's right.

Q. Did that not culminate in a statement by the Commis-

431 sioner that an additional sum of one million dollars be placed?

A. I forgot the sum.

By Mr. HARLAN BESSON:

Q. You have stated before that there are claims against this Company aggregating more than $59,000,000.00?

A. Yes.

Q. And the total assets don't exceed $2,000,000.00?

A. Three and one-half. Book value.

Q. How are they arrived at?

A. Cost.

Q. Cost and not market value?

A. As a matter of fact, the market value at the present time is less than the book value.

Q. Can you tell us what assets they are?

A. Practically all New Jersey municipals, as bonds are selling below par.

Q. Of course, this includes a lot of bonds which are not below par?

A. Not far below. At the present time we have some $400,000.00 worth of Home Owners' Loan Corporation bonds which are always at par.

(Counsel for the respective parties hereto, by stipulation, have agreed to waive the reading and subscribing of the depositions by the witnesses.)

STATE OF NEW JERSEY,
County of Essex, ss:

I, Meyer Q. Kessel, being a Notary Public of the State of New Jersey, do hereby certify that pursuant to the attached notice in the above entitled cause, wherein William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, and The
432 London Operating Company, a Florida corporation are complainants, and W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of the State of Florida, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation organized under the insurance laws of the State of New Jersey, are defendants, now pending in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida. I sat at 1060 Broad Street, Newark, New Jersey, at the time stated in said notice and herein above, for was attended by Saul Nemser and William Donnolly, appearing for John Milton, appearing in behalf of Herbert U. Feibelman, Solicitor and of Counsel for the complainant, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, and Harlan Besson, United States District Attorney for the District of New Jersey, appearing for John W. Holland, United States District Attorney for the Southern District of Florida, representing the United States of America, and the said witnesses, Pierre P. Garven, and Timothy A. McNicholas, who were by me first duly cautioned and sworn to testify the whole truth, and carefully examined, and thereupon testified as is hereinabove shown, and the testimony of said witnesses was reduced to typewriting by Dorothy Thompson, after being duly sworn according to law, under my personal supervision, and that the reading and subscribing of the said depositions by the said witnesses was waived by stipulation of counsel for the respective parties.

I further certify that there was offered into evidence, as is hereinabove shown, three exhibits, respectively marked Exhibit "A", "B", and "C", which are hereby included in the return made by me.

I further certify that the said depositions were taken at the place and time specified in the aforesaid notice and hereinabove, or at regular adjournments thereafter; and I further certify that
433 the reason for the taking of said depositions was and is, that the said witnesses reside out of the County in which this cause is pending; and that I am neither of Counsel nor Solicitor to either of the parties in said suit, nor interested in the event of the cause.

I further certify that I have retained the said depositions for the purpose of sealing up the same and directing it with my own hand to the Court for which it was taken, and sending the same to the Clerk of said Court by United States mail, and there to remain under seal until the same shall be opened.

Witness my hand and official seal in the City of Newark, County of Essex, and State of New Jersey, this Twentieth day of November, 1934.

[SEAL.] MEYER Q. KESSEL,
A Notary Public of New Jersey.

My commission expires November 2nd, 1939.

434 In Circuit Court of Leon County

[Title omitted.]

No. 3111

Assignments of error

Now comes the Complainant, William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, as Appellant, by and through his Solicitor, Herbert U. Feibelman, and files this, his Assignments of Error that he intends to rely upon for reversal in the Supreme Court, said assignments of error being filed at the time when he is applying to the Clerk for a transcript of record in the above stated consolidated cause.

435 And the said William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, through his Solicitor as aforesaid, respectfully showeth that in the record and proceedings aforesaid, and also in the rendition of the Order of October 27th, A. D. 1934, appealed from in this case, manifest error hath happened, in this:

Assignment of Error I

The Court erred in entering its order of October 27th, A. D. 1934.

Assignment of Error II

The Court erred in holding that the deposit of the New Jersey Fidelity and Plate Glass Insurance Company, a corporation organ-

ized under the insurance laws of the State of New Jersey, with the Florida State Treasurer was not a trust fund for the benefit only of such creditors as had obtained judgments and given the statutory notice.

Assignment of Error III

The Court erred in failing to hold that the surplus in the hands of the Receiver remaining after the payment of judgment creditors who had given notice became a general asset for the benefit of all creditors, and in failing to hold that the same should be remitted to William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, for pro rata distribution.

Assignment of Error IV

The Court erred in failing to hold that any judgments entered after the New Jersey Fidelity and Plate Glass Insurance Company became insolvent and was placed in liquidation in the State of its domicile were void.

Assignment of Error V

The Court erred in the order for payment of claims "preferred and unpreferred" in that it is repugnant to the
436 Constitution of the United States.

Assignment of Error VI

The Court erred in failing to hold that Chapter 16248 of the General Acts of the Legislature of Florida, 1933 (Senate Bill No. 288), by authority of which the order of October 27, 1934, was entered, is unconstitutional because repugnant to Article 1, Section 10, Article 4, Sections 1 and 2, and the Fourteenth Amendment, to the Constitution of the United States.

Assignment of Error VII

The Court erred in the order complained of because it confers rights on creditors without judgments, which said creditors did not have prior to the insolvency and liquidation of the insurance company.

Assignment of Error VIII

The Court erred in said order of October 27, 1934, because it fails to give full faith and credit to the laws of the State of New Jersey existing at the time of the qualification of the insurance company to do business in Florida, and existing at the time of said company's insolvency and liquidation.

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Assignment of Error IX

The Court erred in said order of October 27, 1934, because it is in denial of the statutory authority of the appellant, conferred by the laws of the State of New Jersey.

Assignment of Error X

The Court erred in its failure to hold repugnant to the Federal Constitution, Chapter 16248 of the General Acts of the Legislature of 1933, being an act to amend Section 4340 of the Revised
437 General Statutes of Florida of 1920, the same being Section 6303 of the Compiled General Laws of Florida 1927, relating to final judgments against surety companies, and providing for the disposition of Florida assets of such surety companies and the securities deposited with the State Treasurer under Section 4339 of the Revised General Statutes of Florida of 1920, in event of insolvency or liquidation of said companies.

Wherefore Appellant contends that the Honorable Judge of the Second Judicial Circuit of Florida in Chancery sitting erred as hereinbefore set forth, and that the said Order, entered October 27th, A. D. 1934, should be by the Supreme Court of Florida reversed and remanded in accordance with the principles of equity made and provided.

H. U. FEIBELMAN,
Solicitor for Appellant.

438 In Circuit Court of Leon County

Consolidated—No. 3111

[Title omitted.]

Directions to clerk as to making up transcript

To Hon. PAUL V. LANG,
Clerk Circuit Court, Leon County, Florida, in Chancery:

You will please prepare a transcript of the record in the consolidated cause of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, Complainant, vs. W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of The State of Florida, and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized under the insurance laws of the State of New Jersey, Defendants, No. 3111, and The London Operating Company, a Florida corporation, Complainant, vs. New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey Corporation, and W. V. Knott, as Treasurer of the State of Florida, Defendants, being cause No. 3171. You are hereby directed to com-
439 mence the making up of said transcript on the 20th day of December 1934, the said date being not less than fifteen days from and after the date of the filing of these written directions.

You are directed to make a part of the transcript of record and to copy the following papers and proceedings in the same, to wit:

1. Copy in full the Bill of Complaint of William H. Kelly filed on December 19, 1932, and show date of filing.

2. Copy in full the Motion to Amend Bill of Complaint filed on December 19, 1932, and show date of filing.

3. Copy in full Order Granting Motion to Amend Bill of Complaint and show date of filing.

4. Copy in full the Temporary Restraining Order enjoining and restraining W. V. Knott, as State Treasurer, etc., from making payments on claims against New Jersey Fidelity and Plate Glass Insurance Company, etc., and show date of filing.

5. Copy in full the Bond of New Jersey Fidelity and Plate Glass Insurance Company, etc., and show date of filing.

6. Copy in full the Answer of W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of Florida and show date of filing.

7. Copy in full the Bill of Complaint of The London Operating Company, to take charge of insolvent surety company to distribute same, etc., and show date of filing.

8. Copy in full Order appointing Receiver to Take Charge of Assets; Restraining Actions, etc., and show date of filing.

9. Copy in full the motion for Order Consolidating Causes and show date of filing.

10. Copy in full the Order Consolidating causes and show date of filing.

11. Copy in full the Certified Copy of Entry of Decree Pro Confesso and show date of filing.

12. Copy in full Notice of Hearing and proof of service and show date of filing.

440 13. Copy in full Intervention of N. R. Robinson and order thereon, and show date of filing.

14. Copy in full Petition of D. M. Lowry, Receiver, for Rule to Show Cause, and show date of filing.

15. Copy in full the Rule to Show Cause, directed to W. V. Knott, State Treasurer, etc., and show date of filing.

16. Copy in full the Petition of Jay-Thorpe, Inc., to intervene, and show date of filing.

17. Copy in full the Petition of Jay-Thorpe, Inc., for Preference, and show date of filing.

18. Copy in full Return of W. V. Knott, State Treasurer, etc., to Rule to Show Cause and show date of filing.

19. Copy in full answer of Defendant, W. V. Knott, as Treasurer of the State of Florida, and show date of filing.

20. Copy in Full Petition to Direct State Treasurer to turn over certain cash and matured coupons, and show date of filing.

21. Copy in full Order Directing State Treasurer to turn over certain cash and matured coupons, and show date of filing.

22. Copy in full Claim of Hernando State Bank and show date of filing.

23. Copy in full Claim of the London Operating Company and show date of filing.

24. Copy in full the five claims of Snedigar and Baya, Attorneys, and show date of filing.

25. Copy in full Claim No. 2, State of Florida for the use and benefit of Date County (Harry Doyle, November 8, 1932, $100.00 principal and $7.45 costs), and recite the date of filing and the filing of Claims Nos. 3 to 13, inclusive, by the same creditor, with the respective dates of filing, Names of principals and amounts of judgments and costs, and recite that all of said claims Nos. 3 to 13, inclusive, were filed by Hon. Vernon Hawthorne, State Attorney.

26. Copy in full Petition of Burbridge Realty Company for Preferred Claim and show date of filing.

441 27. Copy in full Claim of Barnett National Bank, of Jacksonville, and show date of filing.

28. Copy in full Claim of E. W. Yandre, and show date of filing.

29. Copy in full Claim of The First State Bank, Eustis, Florida, and show date of filing.

30. Copy in full Claim of Pearce Produce Company, Inc., and show date of filing.

31. Copy in full Claim of Joseph M. Schlesinger, and show date of filing.

32. Copy in full Claim of The London Operating Company, filed May 16, 1934, and show date of filing.

33. Copy in full Supplement to Proof of Claim of The London Operating Company, and show date of filing.

34. Copy in full Claim of David Hillman, and show date of filing.

35. Copy in full Claim No. 14 (Case No. 182–T United States Civil) of the United States, filed May 27, 1934, and amendment thereto filed May 28, 1934, and recite filing of other claims of the United States, Nos. 15 to 33, inclusive, and the respective Federal Court docket numbers and the amount thereof, and the dates thereof.

36. Copy in full Receiver's Notice to Creditors and proof of publication thereof, and give date of filing.

37. Copy in full the Notice of Hearing for Authorization to pay portion of Attorney's fee by Receiver, and show date of filing.

38. Copy in full Application for Compensation, filed by Honorable Herbert U. Feibelman on October 16th, 1933, and show date of filing.

39. Copy in full Answer of Receiver to Application for Compensation filed in said cause on behalf of Hon. Herbert U. Feibelman, and show date of filing.

40. Copy in full Order denying Petition for Compensation, and show date of filing.

442 41. Copy in full Petition of Hon. William H. Kelly for Compensation for his Attorney, Hon. Herbert U. Feibelman, and show date of filing.

42. Copy in full Answer of Receiver to Petition of William H. Kelly, and show date of filing.

43. Copy in full Order denying Petition of Hon. William H. Kelly, and show date of filing.

44. Copy in full Order on Rule to Show Cause, and show date of filing.

45. Copy in full Answer and Motion to Dismiss claims of the United States, and show date of filing.

46. Copy in full Certificate of the Appointment of E. L. Semple, as Attorney in Fact, of the New Jersey Fidelity & Plate Glass Insurance Company, and show date of filing thereof.

47. Copy in full Order of Court of May 16th, 1933, assuming jurisdiction over the parties and subject matter, and date of filing thereof.

48. Copy in full Motion to Strike Answer and Motion to Dismiss claims of the United States, and show date of filing.

49. Copy in full Order on Claims of United States, and show date of filing.

50. Copy in full Receiver's Report filed on June 14, 1934, and show date of filing.

51. Copy in full Order on Receiver's Report, and show date of filing.

52. Copy in full Affidavit of Service of copy of Report of Receiver, and show date of filing.

53. Copy in full supplemental Report of Receiver on Claims Nos. 43, 44, and 45, and show date of filing.

54. Copy in full Exceptions to Receiver's Report, and show date of filing thereof.

55. Copy in full Petition of Hon. William H. Kelly, filed on July 23, 1934, and show date of filing thereof.

56. Copy in full Petition for Reimbursement of the Hon. William H. Kelly, filed July 31, 1934, and show date of filing thereof.

443 57. Copy in full Exceptions of N. R. Robinson to the Report of the Receiver, filed August 6, 1934, and show date of filing thereof.

58. Copy in full Petition for Intervention on behalf of David Hillman and Order thereon, and show date of filing.

59. Copy in full Answer and Motion to Dismiss of N. R. Robinson to Petition of William H. Kelly, and show date of filing thereof.

60. Copy in full Motion to Strike Exceptions to Claim No. 41, filed on August 7, 1934, and show date of filing thereof.

61. Copy in full Order on the Report of the Receiver on all Claims filed with him within the period of one year from the date of his appointment, and show date of filing thereof.

62. Copy in full Petition and Notice of Hearing filed by the Receiver on August 25, 1934, and show date of filing thereof.

63. Copy in full Order of Court on Undisposed Claims, filed on September 3, 1934, and show date of filing thereof.

64. Copy in full Report of D. M. Lowry, Receiver, and an Accounting as of September 14, 1934, and prayer for Sale of Assets and decree of distribution and for further directions, and show date of filing thereof.

65. Copy in full objections filed on behalf of Hon. William H. Kelly to the allowance of the claims of the United States, filed on October 20, 1934, and show date of filing thereof.

66. Copy in full Order of the Court on the Application of the Receiver for the sale of the securities received by him, and show date of filing thereof.

67. Copy in full Order of the Court on the Report of D. M. Lowry, Receiver, and on Accounting as of September 14, 1934, and prayer for Sale of Assets and decree of distribution and for further directions, dated October 27, 1934, and recorded in Chancery Order Book #11 on page 464, and show filing date of such Order.

444 68. Copy in full the Mandate of the Supreme Court of Florida in the case of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, etc., vs. W. V. Knott, as State Treasurer, etc., and show date of filing.

69. Copy in full Notice of Appeal entered November 5, 1934, and show date of filing thereof.

70. Copy in full Application for Supersedeas, filed November 5, 1934, and show date of filing thereof.

71. Copy in full Order of Court on Application for Supersedeas, and show date of filing thereof.

72. Copy in full Motion for Order to open Deposition of Pierre P. Garven, and show date of filing thereof.

73. Copy in full Order of Court opening Deposition of Pierre P. Garven, and show date of filing.

74. Copy in full Deposition of Pierre P. Garven and T. A. McNichalas, and show date of filing.

75. Copy in full Assignment of Errors, and show date of filing.

76. Copy in full Directions to the Clerk.

77. Copy in full Order of Court denying Supersedeas, entered November 24, 1934, and show date of filing thereof.

78. Copy in full receipts and proof of service of copies of Assignments of Error and Directions to the Clerk.

You are hereby directed to omit all other and further papers and proceedings in the said cause from the transcript of record.

Dated this the 1st day of December, 1934.

H. U. FEIBELMAN,

Solicitor for William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey.

445 In Circuit Court of Leon County

[Title omitted.]

#3171

Order denying supersedeas

Filed Nov. 24, 1934

William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, having heretofore entered an appeal to the Supreme Court of the State of Florida, from an order of this Court made in the above styled and entitled causes, as consolidated, on the 27th day of October, 1934, and having applied to this
446 Court for an order of supersedeas, and the Court having heretofore, at the request of the attorney for the said William H. Kelly, postponed a decision on the application for an order of supersedeas until this date, and having heard the argument of counsel for the respective parties, and being advised in the premises, doth find as follows:

1. That on December 19, 1932, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, by his solicitor, Herbert U. Feibelman, filed in this Court a bill of complaint, alleging that as such Insurance Commissioner he was liquidating the affairs of the New Jersey Fidelity & Plate Glass Insurance Company in the State of its domicile, to wit, the State of New Jersey; that the said surety company had deposited with the Treasurer of the State of Florida securities of the approximate value of $75,000.00, as required by the laws of the State of Florida; that it was necessary that the Court take jurisdiction of the matter, so as to prevent inequalities in the payment of obligations of the said surety company to creditors thereof in the State of Florida; the said bill prayed for and obtained an injunction from this Court. 2.

2. That on May 10, 1933, the Legislature of the State of Florida, enacted Senate Bill No. 288, or Chapter 16, 248, of the Acts of Florida of 1933.

3. That on May 16, 1933, The London Operating Company filed its bill of complaint in this Court, and pursuant to the provisions of Chapter 16, 248, supra, prayed for and obtained the appointment of a Receiver in the State of Florida of the New Jersey Fidelity & Plate Glass Insurance Company; that on the 25th day of May, 1933, William H. Kelly, in his official capacity as aforesaid, filed in the cause styled William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey vs. W. V. Knott, as State Treasurer, etc., a petition for the consolidation of that cause with the cause of The London Operating Company vs. New Jersey
447 Fidelity & Plate Glass Insurance Company and W. V. Knott, and on that date an order consolidating the cause filed by Commissioner Kelly was made by the Judge of this Court, so that

by the petition and order of consolidation the said William H. Kelly, as Commissioner of Banking and Insurance, made himself a party to the receivership suit, which order of consolidation recited as follows: "and it appearing unto the court that substantially the same relief is sought in both causes, and that by the consolidation of the causes, needless expense and delay and the multiplicity of suits will be avoided, * * *" that by the action of the said William H. Kelly, as Commissioner of Banking and Insurance, hereafter referred to as the Appellant, the Appellant recognized the appropriateness of the proceeding for the appointment of a Receiver under Senate Bill 288.

4. That on October 16, 1933, Herbert U. Feibelman, Esq., attorney for the Appellant, in his official capacity, filed an application in said receivership cause for compensation for services rendered by the said Appellant, through his said attorney, to said fund, and for the benefits accruing to said receivership by reason of his services in the injunction proceeding, and his services in assisting in the drafting of Senate Bill 288, it being alleged in said petition in part as follows: "Petitioner further shows that during the month of April and at the instance and by authority of the said William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, and for the sole purpose of insuring the fair and equitable distribution of the proceeds of the sale of the said securities on deposit as aforesaid, he went to Tallahassee and there collaborated with the Attorney General of the State of Florida for the purpose of drafting needful legislation to secure such equitable and proportional distribution; * * * that this petitioner, in collaboration with the Attorney General of the State of Florida, drafted that certain law known as Senate Bill #288, which, through the efforts of the Attorney General and this attorney, was enacted into law and is now a part of the statutes of the State of
448 Florida. Petitioner further shows that the effect of the first of said suits is to bring the securities of the New Jersey Fidelity and Plate Glass Insurance Company into the custody of this Court, thereby creating a trust fund and granting to all persons the benefits of the injunction obtained on, to wit, December 19, 1932."

The above petition for compensation was not allowed by the Court, and thereafter, on, to wit, December 18, 1933, William H. Kelly, in his official capacity, filed a petition in said receivership cause for compensation and reimbursement for the services rendered through his attorney, Herbert U. Feibelman, wherein the said William H. Kelly, in his official capacity, adopted the matters and things set forth in the petition filed by his attorney, Mr. Feibelman, and further said: "Petitioner further alleges that the services of the said attorney disclosed and brought to light and protected a substantial trust fund", and that "The consolidation of the original cause with subsequent suit filed under Senate Bill #288, brought

about an equitable and proportional distribution of the said trust fund * * *"; so that by the said petition the said Appellant recognized the securities in the hands of the State Treasurer as a trust fund, approved the efficacy and wisdom of Senate Bill 288, drafted by his said attorney, and undertook to obtain benefits under said Senate Bill 288, which said Senate Bill 288 the said Appellant now contends is unconstitutional.

5. That on July 23, 1934, William H. Kelly, in his official capacity, through his attorney, Herbert U. Feibelman, filed in said cause a petition, wherein it was set out in part as follows:

"That the securities on deposit with the defendant, W. V. Knott, State Treasurer and ex-officio Insurance Commissioner, under Section 6302 of the Compiled General Laws of Florida, 1927, comprise a trust fund for the protection of the obligees under surety bonds on which the New Jersey Fidelity & Plate Glass Insurance Com-
449 pany is surety; that these securities should answer for no other indebtedness than the indebtedness to these obligees, together with the costs and expenses of the Florida Receivership and expenses incurred in the preservation and protection of said Florida fund; that after the payment of the said indebtedness to Florida obligees and the costs and expenses of the Receivership and the preservation of said fund, the surplus, if any, should be turned over and delivered to this petitioner for administration and distribution in conformity with the laws of the State of New Jersey; that this surplus is not chargeable with any other indebtedness arising in the State of Florida than that of indebtedness under surety bonds and the costs and expenses of the Florida Receivership and the preservation of said fund, and by no law in the State of Florida should such surplus be retained or administered in the pending receivership after the discharge of said indebtedness and such costs and expenses.

"Wherefore, this petitioner prays that the Court will, after the payment of all just claims under Florida surety bonds, upon which the New Jersey Fidelity & Plate Glass Insurance Company was surety, and the proper costs and expenses of preserving the said Florida trust fund, enter an order that the surplus, if any, be turned over to this petitioner or his accredited representative."

The order of October 27, 1934, appealed from, was in conformity with the above petition in that only claims arising out of surety bonds and surety contracts held by residents of Florida were ordered paid by the Court, and the question of the disposition of the residue in the hands of the Receiver was reserved in and by said order, since it was apparent that ample funds were in the hands of the Receiver to pay all the costs of the receivership and the preservation of the fund, as well as the claims of the United States filed with the Receiver.

6. That on July 31, 1934, the appellant, in his official capacity, filed a petition in said cause, wherein he said that the securities deposited

with the State Treasurer, under Section 6302, Compiled General Laws of Florida, constituted a trust fund for the protection of
450 Florida creditors on its surety bonds, and that the services of petitioner's attorney were in "protecting and conserving the said trust fund for the benefit of obligees under Florida surety bonds, etc." The petition prayed that the petitioner be reimbursed out of the assets held by the Florida Receiver in the sum of $14,837.28, which embraced the sum of $2,500.00 paid by him to his attorney, Mr. Herbert U. Feibelman.

7. The Court order of October 27, 1934, appealed from, provided for the payment by the Receiver of claims aggregating some $28,476.28, to the following claimants: State of Florida, for the use of Dade County; Burbridge Realty Company; Jay-Thorpe, Inc.; Hernando State Bank; Paul D. McGarry & John C. Sullivan; First State Bank, Eustis, Fla.; Barnett National Bank of Jacksonville; E. W. Yandre; Pearce Produce Co.; London Operating Company; but that none of the claimants above mentioned, who have a vital interest in the decree appealed from, were made parties to the appeal, and, therefore, the appeal seeks to affect rights accruing to said claimants in said decree without the claimants being before the Appellate Court. There is also grave doubt as to whether or not the said claimants would be protected under any supersedeas bond that might be allowed.

8. Furthermore, in view of the fact that the order of the Court appealed from is in compliance with the petition of the Appellant for the payment of Florida creditors holding obligations arising out of 1933, was alleged by the petitioner to have been prepared by lant to receive the residue of the fund and to receive reimbursement for his alleged expenditures in the preservation of the fund, have not been decided by the Court, and in view of the fact that the statute in question, to wit, Senate Bill 288, or Chapter 16, 248, Acts of 1933, was alleged by the petitioner to have been prepared by his attorney for the preservation of the trust fund, and
451 in view of the fact that the petitioner had subjected himself to the jurisdiction of the Court acting under Senate Bill 288, and has applied for and now has pending petitions for payment of monies to him, this Court is of the view that the petitioner is estopped to allege that the said statute, the handiwork of his aattorney, is unconstitutional.

For the reasons hereinabove advanced, the application for the supersedeas prayed for by the said Appellant is hereby denied.

Done, ordered, adjudged, and decreed in Chambers, at Tallahassee, Florida, this the 24th day of November, A. D. 1934.

J. B. JOHNSON,
Circuit Judge.

452 In Circuit Court of Leon County

No. 3111

[Title omitted.]

Receipts

Filed Dec. 3, 1934

Received a copy of the Assignments of Error and a copy of the Directions to Clerk as to making up Transcript, filed by the Appellant in the above entitled cause, this 1st day of December, A. D. 1934.

Cary D. Landis,
Hon. CARY D. LANDIS,
Attorney-General of Florida, representing W. V. Knott, as State Treasurer and ex-officio Insurance Commissioner of the State of Florida.

453 WALLER & PEPPER,
Attorneys for D. M. Lowry, Receiver.
FRANK B. WINTHROP,
Attorney for N. R. Robinson.

454 [Title omitted.]

Received A copy of the Assignments of Error and a copy of the Directions to Clerk as to making up transcript, filed by the Appellant in the above styled cause, this 3rd day of December, A. D. 1934.

Thomas Anderson. THOMAS ANDERSON, Miami, Florida, attorney for Snedigar & Baya; Stanley C. Myers, STANLEY C. MYERS, Miami, Florida, Attorney for The
455 London Operating Company; Hon. N. Vernon Hawthorne, Miami, Florida, Attorney for Dade County; Otto C. Stegemann, OTTO C. STEGEMANN, Miami, Florida, Attorney for Burbridge Realty Co.; Roland W. Granat, Miami, Florida, Attorney for Jay-Thorpe, Inc.; Paul D. McGarry, PAUL D. MCGARRY, Miami, Florida; John C. Sullivan, JOHN C. SULLIVAN, Miami, Florida; Patterson, Blackwell & Knight, PATTERSON & KNIGHT, Miami, Florida, Attorneys for N. R. Robinson; Stapp, Gourley, Vining & Ward, STAPP, GOURLEY, VINING & WARD, Miami, Florida, Attorneys for Pearce Produce Co.; Bart A. Riley, by W. S. Ward.

456 In Circuit Court of Leon County

Consolidated No. 3111

[Title omitted.]

Affidavit of service

Filed Dec. 3, 1934

STATE OF FLORIDA,
County of Dade, ss:

On this day personally appeared before me, the undersigned authority, Faith Tribble, who, being by me first duly sworn, deposes and says: That she is employed by Herbert U. Feibelman, Esq., Attorney for William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, Appellant; that she did, on the 3rd day of December 1934, mail to each of the following parties, at the address shown opposite the name of each, a copy of the assignments of error and a copy of the directions to Clerk as to making up tran-
457 script, by depositing same in the United States Post Office at Miami, Dade County, Florida, in an envelope addressed to each of the following parties, and that said envelopes so addressed to each of said parties and deposited in said Post Office, had placed thereon sufficient postage to insure their delivery:

Hon. John W. Holland, United States District Attorney, Jacksonville, Florida;

Hernando State Bank, Brooksville, Florida;

Messrs. Sutton, Tillman & Reeves, Attorneys at Law, Tampa, Florida;

Mr. Wellborn C. Phillips, Orlando, Florida;

Mr. Giles J. Patterson, Attorney at Law, Jacksonville, Florida;

Mr. Joseph M. Schlesinger, % Southern Bail Bond Co., 541 W. Forsyth Street, Jacksonville, Florida;

Mr. Claude L. Gray, Attorney at Law, Orlando, Florida;

Mr. H. A. Love, Jr., 613 Professional Bldg., Jacksonville, Florida;

Mr. Guyte P. McCord, Attorney at Law, Tallahassee, Florida;

Hon. T. A. McNicholas, Special Assistant Deputy Commissioner of Insurance, 31 Clinton Street, Newark, New Jersey.

FAITH TRIBBLE.

Sworn to and subscribed before me this 3rd day of December, A. D. 1934.

[SEAL] FLORENCE E. DREWS,
Notary Public, State of Florida, at Large.

My commission expires Nov. 13, 1937.

458 STATE OF FLORIDA,
County of Dade, ss:

Before me, the undersigned authority, personally appeared CATHERINE CUNNINGHAM, who, upon being first duly sworn, deposes and says:

That she is employed by Herbert U. Feibelman, Esq., Attorney for William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, Appellant; that she did call at the office of the following-named parties for the purpose of delivering copies of assignments of error and directions to Clerk in making up transcript; that they stated that they would be there at a set time; that upon calling at said offices, said parties were not in; that she thereupon returned to the office of her employer and mailed to each of the following attorneys, at the address shown opposite the name of each, a copy of said assignments of error and directions to Clerk in making up transcript, by depositing same in the United States Post Office at Miami, Dade County, Florida, in an envelope addressed to each of the following parties, and that said envelopes so addressed and so deposited had placed thereon sufficient postage to insure their delivery.

Hon. N. Vernon Hawthorne, State Attorney, 5th Floor, Dade County Courthouse, Miami, Dade County, Florida; and

Roland W. Granat, Attorney at Law, Seybold Building, Miami, Florida.

CATHERINE CUNNINGHAM.

Sworn to and subscribed before me at Miami, Dade County, Florida, this 3rd day of December, A. D. 1934.

[SEAL] FLORENCE E. DREWS,
Notary Public, State of Florida at large.

My Commission expires Nov. 13, 1937.

459 [Clerk's certificate to foregoing transcript omitted in printing.]

460 And Thereafter, to wit: On the 8th day of February, A. D. 1935, came the aforesaid Appellants and filed in the Supreme Court of Florida a certified supplemental Transcript of the Record in the aforesaid consolidated causes which supplemental Transcript of the Record is in words and figures as follows, to wit:

463 In Circuit Court of Leon County

Consolidated No. 3111

[Title omitted.]

Stipulation as to record on appeal under section 4966 C. G. L., Fla. 1927

Filed Jan. 11, 1935

It is hereby stipulated, understood, and agreed, by and between the undersigned counsel for the respective parties represented by said counsel, as follows, to wit:

1. This stipulation is entered into under the express provisions of Section 4966, C. G. L., Fla. 1927, and has for its purpose the saving of time and expense in getting up the record on appeal.

464 2. The United States of America filed in the Circuit Court of the Second Judicial Circuit of Florida, in and for Leon County, sitting in chancery, case number 3171, in addition to claim No. 14, already copied in detail in the transcript, a number of claims Nos. 15 to 33, inclusive. Each of said claims is exactly like said claim No. 14, in all respects, with the following exceptions:

Claim No. 15 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 189–T, U. S. Civil, in the principal sum of $500.00 entered on the 9th day of January, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00 and provides for interest at the rate of 8% per annum from the 9th day of January, A. D. 1933. Said judgment is based upon summons served December 8, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L. Fla. 1927 on the 10th day of February, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 17th day of November, A. D. 1932.

Claim No. 16 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 190–T, U. S. Civil, in the principal sum of $500.00 entered on the 9th day of January, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00 and provides for interest at the rate of 8% per annum from the 9th day of January, A. D. 1933. Said judgment is based upon summons served December 8, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927 on the 10th day of February, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 18th day of February, A. D. 1932.

Claim No. 17 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 191–T, U. S. Civil, in the principal sum of $300.00 entered on the 9th day of January, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00 and provides for interest at the rate of 8% per annum from the 9th day of January, A. D. 1933. Said judgment is based upon summons served December 8, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927 on the 10th day of February, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 14th day of November, A. D. 1932.

Claim No. 18 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 192–T, U. S. Civil, in the principal sum of $500.00 entered on the

9th day of January, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00 and provides for interest at the rate of 8% per annum from the 9th day of January, A. D. 1933. Said judgment is based upon summons served December 8, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927 on the 10th day of February, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 15th day of November, A. D. 1932.

465 Claim No. 19 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 193–T, U. S. Civil, in the principal sum of $500.00 entered on the 9th day of January, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00, and provides for interest at the rate of 8% per annum from the 9th day of January, A. D. 1933. Said judgment is based upon summons served December 8, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927 on the 10th day of February, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 6th day of December, A. D. 1932.

Claim No. 20 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 203–T, U. S. Civil, in the principal sum of $500.00, entered on the 31st day of March, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00 and provides for interest at the rate of 8% per annum from the 31st day of March, A. D. 1933. Said judgment is based upon summons served February 20, 1933. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla., 1927 on the 2nd day of May, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 13th day of February, A. D. 1933.

Claim No. 21 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 206–T, U. S. Civil, in the principal sum of $300.00, entered on the 18th day of April, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00 and provides for interest at the rate of 8% per annum from the 18th day of April, A. D. 1933. Said judgment is based upon summons served March 1, 1933. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927 on the 20th day of May, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 23rd day of February, A. D. 1933.

Claim No. 22 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 595–M, U. S. Civil, in the principal sum of $3,000.00, entered on the 14th day of February, A. D. 1933. Said judgment provides for

costs in the additional amount of $19.00 and provides for interest at the rate of 8% per annum from the 14th day of February, A. D. 1933. Said judgment is based upon summons served June 6, 1931. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927 on the 17th day of March, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 2nd day of April, A. D. 1931.

Claim No. 23 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 628–M, U. S. Civil, in the principal sum of $17.00, entered on the 15th day of September, A. D. 1932. Said judgment provides for interest at the rate of 8% per annum from the 15th day of September, A. D. 1932. Said judgment is based upon summons
466 served November 18th, 1931. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla., 1927, on the 10th day of December, A. D. 1932. The bail bond upon which the judgment is based was estreated on the 26th day of October, A. D. 1931.

Claim No. 24 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 630–M U. S. Civil, in the principal sum of $1,000.00, entered on the 3rd day of January, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00, and provides for interest at the rate of 8% per annum from the 3rd day of January, A. D. 1933. Said judgment is based upon summons served December 8, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927, on the 7th day of February, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 21st day of October, A. D. 1931.

Claim No. 25 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 631–M U. S. Civil, in the principal sum of $17.00, entered on the 15th day of September, A. D. 1932. Said judgment provides for interest at the rate of 8% per annum from the 15th day of September, A. D. 1932. Said judgment is based upon summons served November 18th, 1931. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927, on the 10th day of December, A. D. 1932. The bail bond upon which the judgment is based was estreated on the 20th day of October, A. D. 1931.

Claim No. 26 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 632–M U. S. Civil, in the principal sum of $1,000.00, entered on the 3rd day of January, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00, and provides for interest at the rate of 8% per annum from the 3rd day of January, A. D.

1933. Said judgment is based upon summons served December 8th, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927, on the 7th day of February, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 10th day of May, A. D. 1932.

Claim No. 27 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 636–M U. S. Civil, in the principal sum of $1,000.00, entered on the 3rd day of January, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00, and provides for interest at the rate of 8% per annum from the 3rd day of January, A. D. 1933. Said judgment is based upon summons served December 8th, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927, on the 7th day of February, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 26th day of October, A. D. 1931.

Claim No. 28 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case
467 No. 667–M U. S. Civil, in the principal sum of $50.00 entered on the 23rd day of January, A. D. 1933. Said judgment provides for interest at the rate of 8% per annum from the 23rd day of January, A. D. 1933. Said judgment is based upon summons served August 22nd, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927, on the 10th day of December, A. D. 1932. The bail bond upon which the judgment is based was estreated on the 9th day of May, A. D. 1932.

Claim No. 29 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 668–M, U. S. Civil, in the principal sum of $500.00, entered on the 26th day of September, A. D. 1932. Said judgment provides for costs in the additional amount of $17.00, and provides for interest at the rate of 8% per annum from the 26th day of September, A. D. 1932. Said judgment is based upon summons served July 21st, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927, on the 10th day of December, A. D. 1932. The bail bond upon which the judgment is based was estreated on the 9th day of May, A. D. 1932.

Claim No. 30 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 677–M, U. S. Civil, in the principal sum of $100.00, entered on the 26th day of September, A. D. 1932. Said judgment provides for costs in the additional amount of $17.00, and provides for interest at the rate of 8% per annum from the 26th day of September, A. D. 1932. Said judgment is based upon summons served July 25th, 1932.

The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927, on the 10th day of December, A. D. 1932. The bail bond upon which the judgment is based was estreated on the 4th day of May, A. D. 1932.

Claim No. 31 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 686–M, U. S. Civil, in the principal sum of $250.00, entered on the 26th day of September, A. D. 1932. Said judgment provides for costs in the additional amount of $17.00, and provides for interest at the rate of 8% per annum from the 26th day of September, A. D. 1932. Said judgment is based upon summons served July 27th, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927, on the 10th day of December, A. D. 1932. The bail bond upon which the judgment is based was estreated on the 11th day of May, A. D. 1932.

Claim No. 32 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 723–M, U. S. Civil, in the principal sum of $1,500.00, entered on the 15th day of February, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00 and provides for interest at the rate of 8% per annum from the 15th day of February, A. D. 1933. Said judgment is based upon summons served December 15th, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303
C. G. L., Fla. 1927, on the 17th day of March, A. D. 1933.
468 . The bail bond upon which the judgment is based was estreated on the 3rd day of November, A. D. 1932.

Claim No. 33 is based upon a judgment entered in the United States District Court for the Southern District of Florida, case No. 735–M U. S. Civil, in the principal sum of $2,000.00, entered on the 14th day of February, A. D. 1933. Said judgment provides for costs in the additional amount of $17.00, and provides for interest at the rate of 8% per annum from the 14th day of February, A. D. 1933. Said judgment is based upon summons served December 17th, 1932. The notice was served on the State Treasurer and Insurance Commissioner at Tallahassee, Florida, under Sections 6302 and 6303 C. G. L., Fla. 1927 on the 17th day of March, A. D. 1933. The bail bond upon which the judgment is based was estreated on the 6th day of May, A. D. 1932.

3. The United States filed a showing, sworn to on the 17th day of November, A. D. 1934, and filed on the — day of November, A. D. 1934, as to whether or not duplicate claims had been filed with the Liquidation of the New Jersey Fidelity and Plate Glass Insurance Company in the state of domicile of the corporation, and as to what likelihood existed as to a dividend thereon. Said showing is in the following words and figures, to wit:

In Circuit Court Second Judicial Circuit in and for Leon County, Florida, in Chancery

THE LONDON OPERATING COMPANY, A CORPORATION; COMPLAINANT

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW JERSEY CORPORATION, ET AL., DEFENDANTS

Comes now the United States of America, by its undersigned attorneys, and respectfully shows unto the Court as follows, to wit:

1. That the claims of the United States filed herein have also been filed with Honorable William H. Kelly, as Commissioner of Banking and Insurance in the State of New Jersey, who has taken over the assets of the New Jersey Fidelity & Plate Glass Insurance Company of Newark, New Jersey, at the request of the Board of Directors of the said corporation, at the close of business on May 28, 1932, for the purpose of proceeding to liquidate the company in accordance with provisions of Chapter 244, Public Laws of New Jersey, 1931.

2. That while the said William H. Kelly, in accordance with
469 the resolution of the said Board of Directors and the laws of said State, has proceeded to liquidate the affairs of said corporation with a view to distributing its remaining assets among the creditors of said corporation, the United States is unable to make a definite showing at this time as to what percentage it will receive on its said claims which have been filed, as aforesaid, with the said William H. Kelly as Liquidator of said corporation, as aforesaid; that, while it appears likely that the Government will recover a portion of its claims against said corporation from said Liquidator, it does not appear probable that said claims can be satisfied in full.

3. That in the event the claims of the United States are ordered to be paid by the Receiver herein, such payment will be taken into consideration by the United States of America in connection with its claims pending with the Liquidator, and the Liquidator will be immediately notified of such payment and the United States will not, in any event, accept more than the amount due the United States on said claims by way of duplicate payment, or otherwise.

John W. Holland,
/S./ JOHN W. HOLLAND,
United States Attorney.
William A. Paisley,
/S./ WILLIAM A. PAISLEY,
Assistant United States Attorney.

VERIFICATION

STATE OF FLORIDA,
County of Duval, ss:

WILLIAM A. PAISLEY, being first duly sworn, deposes and says that he is an Assistant United States Attorney in and for the Southern

District of Florida, and as such is of counsel for the United States of America herein: that he has prepared the foregoing statement and knows the contents thereof; that the matters of fact set forth in said motion are true to the best of his knowledge, information, and belief, based upon official communications to the United States Attorney for the Southern District of Florida from the Attorney General of the United States; that this affidavit is made by affiant, and not by the United States of America, because the United States of America is a corporation sovereign.

/S./ WILLIAM A. PAISLEY.

Subscribed and sworn to before me this 17th day of November, A. D. 1934.

/S./ EDITH E. HOUSE.
Notary Public, State of Florida at Large.

My Commission Expires June 16, 1938.

Said showing on behalf of the United States was made pursuant to order of Court dated November 23rd, 1934, as follows, to wit:

470 In Circuit Court, Second Judicial Circuit, in and for Leon County, Florida

In Chancery

THE LONDON OPERATING COMPANY, A CORPORATION, COMPLAINANT

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey corporation, et al., defendants

ORDER

It appearing that, in response to suggestion of the Court, the attorneys representing the United States of America have presented a showing as to whether or not claims of the United States have been filed in the domiciliary State of the New Jersey Fidelity & Plate Glass Insurance Company and as to the likelihood of any dividends being received on said claims from the Liquidator of the corporation in said State, it is, upon consideration,

Ordered and Adjudged that the United States of America be and it is hereby allowed to file herein such showing as it is able to make as to whether or not claims filed herein have also been filed with the Liquidator of the New Jersey Fidelity & Plate Glass Insurance Company in New Jersey, and what percentage, if any, has been paid on said claims, or will be paid thereon.

Done and Ordered in Chambers at Tallahassee, Florida, this — day of November, A. D. 1934.

/S./ JOHN B. JOHNSON.
Judge.

4. The United States of America filed a motion for leave to further amend proofs of claim filed by the United States, Nos. 14 to 33, inclusive, which said motion is as follows:

In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County

In Chancery, No. 3171

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, and W. V. Knott, as Treasurer of the State of Florida

MOTION FOR LEAVE TO FURTHER AMEND PROOFS OF CLAIM FILED BY THE UNITED STATES, BEING CLAIM NOS. 14–33, INCLUSIVE

471 Comes now the United States of America, by its undersigned attorneys, and respectfully moves the Court for an Order allowing it to further amend its proofs of claim filed herein, same being numbered 14 to 33, inclusive, by adding to Paragraph III thereof the following, to wit:

"Said New Jersey Fidelity & Plate Glass Insurance Company, by resolution of its Board of Directors, on the 28th day of May, A. D. 1932, requested the Department of Banking and Insurance of New Jersey to take possession of the assets of said corporation at the close of business on said day for the purpose of liquidating its assets and applying same to the indebtedness of said corporation and liquidating the company in accordance with the provisions of Chapter 244, Public Laws of New Jersey for the year 1931, and, pursuant to said resolution, the Commissioner of Banking and Insurance of the State of New Jersey has proceeded to liquidate the assets of said corporation with a view to winding up the affairs of the corporation; that said assets will not be sufficient to pay said liabilities and there is no hope, intention, or expectation that the corporation will be able to meet its indebtedness and resume business as a going concern."

John W. Holland,
/S./ JOHN W. HOLLAND,
United States Attorney.
William A. Paisley,
/S./ WILLIAM A. PAISLEY,
Assistant United States Attorney.

Said motion was granted by Order of Court which is as follows, to wit:

In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County

In Chancery, No. 3171

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, and W. V. Knott, as Treasurer of the State of Florida

ORDER

This cause having come on this day to be heard upon motion of the United States to further amend its proofs of claim, same being numbers 14 to 33, inclusive, in the respects set forth in said motion, it is, upon consideration,

Ordered, adjudged, and decreed that the United States be and it is hereby allowed to further amend its proofs of claim num-
472 bered 14 to 33, inclusive, in the respects set forth in said motion.

Done, Ordered, and Decreed at Tallahassee, Florida, this — day of ————, A. D. 1934.

/S./ JOHN B. JOHNSON,
Judge.

Said amendment to claims of the United States of America is as follows, to wit:

In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County

In Chancery, No. 3171

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, and W. V. Knott, as Treasurer of the State of Florida

AMENDMENT TO PROOFS OF CLAIM FILED BY THE UNITED STATES, NOS. 14–33, INCLUSIVE

Comes now the United States of America, by its undersigned attorneys, and further amends each and every one of its claims filed herein, numbers 14 to 33, inclusive, by adding to Paragraph III thereof the following, to wit:

"Said New Jersey Fidelity & Plate Glass Insurance Company, by resolution of its Board of Directors, on the 28th day of May, A. D.

1932, requested the Department of Banking and Insurance of New Jersey to take possession of the assets of said corporation at the close of business on said day for the purpose of liquidating its assets and applying same to the indebtedness of said corporation and liquidating the company in accordance with the provisions of Chapter 244, Public Laws of New Jersey for the year 1931, and, pursuant to said resolution, the Commissioner of Banking and Insurance of the State of New Jersey has proceeded to liquidate the assets of said corporation with a view to winding up the affairs of the corporation; that said assets will not be sufficient to pay said liabilities and there is no hope, intention, or expectation that the corporation will be able to meet its indebtedness and resume business as a going concern."

John W. Holland,
/S./ JOHN W. HOLLAND.
United States Attorney.

William A. Paisley,
/S./ WILLIAM A. PAISLEY.
Assistant United States Attorney.

473 STATE OF FLORIDA.
County of Duval, ss:

Before me, the undersigned, personally appeared William A. Paisley, to me well known and known by me to be an Assistant United States Attorney for the Southern District of Florida, who, being duly sworn, deposes and says that he is such Assistant United States Attorney, that he has prepared the foregoing amendment to proofs of claim filed by the United States and knows the contents thereof, and that the matters and things therein set forth are true to the best of his information, knowledge, and belief; that he makes this verification on behalf of claimant, being thereunto duly authorized, and that the reason claimant does not make this verification is that claimant is a corporation sovereign.

William A. Paisley.
/S./ WILLIAM A. PAISLEY.

Subscribed and sworn to before me this 13th day of December, A. D. 1934.

Edith E. House,
/S./ EDITH HOUSE,
Notary Public, State of Florida at Large.

My Commission Expires June 16, 1938.

5. The United States of America, in accordance with the rules of practice in chancery appeals in Florida, filed with the Clerk of the Circuit Court of the Second Judicial Circuit in and for Leon County, additional directions to said Clerk as to making up of the transcript herein, and also filed assignments of error, which said assignments of error are as follows, to wit:

In the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida

In Chancery, Consolidated No. 3111

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE OF the State of New Jersey, complainant

vs.

W. V. KNOTT, AS STATE TREASURER AND EX-OFFICIO INSURANCE COMmissioner of the State of Florida, and New Jersey Fidelity and Plate Glass Insurance Company, a Corporation Organized Under the Insurance Laws of the State of New Jersey, defendants

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THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, COMplainant

vs.

474 NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, a New Jersey Corporation, and W. V. Knott, as Treasurer of the State of Florida, defendants.

ASSIGNMENTS OF ERROR FILED BY APPELLEE, UNITED STATES OF AMERICA

Comes now the United States of America, one of the appellees herein, by its undersigned solicitors, and files this its assignments of error that it intends to rely upon in the Supreme Court of Florida, said assignments of error being filed at the same time that additional instructions to the Clerk are filed. The said appellee, the United States of America, respectfully shows unto the Court that in the record and proceedings in this cause, and particularly in the rendition of the order of October 27, A. D. 1934, appealed from, manifest error hath occurred, in this, to wit:

Assignment of Error I

The Court erred in said order of October 27, A. D. 1934, in failing to hold that the claims of the United States of America should be first paid because it affirmatively appeared from said claims that the United States of America had complied with the provisions of Section 6302 and 6303 C. G. L. Fla., 1927, and that the United States had thus acquired a specific lien which could not be divested by subsequent legislation such as Senate Bill 288, which was enacted long after the date of the judgments obtained by the United States and after the service of notice on the State Treasurer as set forth in said Section 6303.

Assignment of Error II

The Court erred in said order of October 27, A. D. 1934, in failing to recognize the priority statute of the United States (Title 31, U. S. C. 191–192), as being applicable to the claims of the United States in this receivership proceedings.

Assignment of Error III

The Court erred in its order of August 7, A. D. 1934, in holding that the claims of the United States were not payable out of the special deposit made with the State Treasurer and in reserving for future determination the question as to whether or not the claims of the United States were entitled to payment out of any surplus which might remain from the proceeds of said special deposit after the payment of all costs of administration expenses of receivership and the payment of all claims ordered paid out of such special deposit, for the reason (1) That the United States was entitled to be paid because of vested rights acquired under Sections 6302 and 6303 C. G. L. Fla., 1927, long prior to the passage of Senate Bill 288, which this appellee contends is clearly unconstitutional, as impairing the obligation of contract and for other reasons if construed to divest said vested rights; (2) Because of the force and effect of the priority statute of the United States (Title 31, U. S. C. 191–192).

475 Assignment of Error IV

The Court erred in its order on claims of the United States dated the — day of ————, A. D. 193—, because of the reasons set forth in Assignment of Error III.

Wherefore the appellee, the United States of America, contends that the orders of the Honorable Judge of the Second Judicial Circuit of Florida, in chancery sitting, and particularly said order of October 27, A. D. 1934, should be by the Supreme Court of Florida reversed and remanded.

John W. Holland,
/S./ JOHN W. HOLLAND,
United States Attorney for the Southern District of Florida,
William A. Paisley,
/S./ WILLIAM A. PAISLEY,
Assistant United States Attorney for the Southern District of Florida,
Solicitors for the United States of America.

Received a copy of the foregoing Assignments of Error this — day of ————, A. D. 19—.

———— ————,
Solicitor for the Appellant.

The Honorable Paul V. Lang, Clerk of said Circuit Court, is hereby authorized and directed to disregard the additional directions filed by the United States of America on December 20th, A. D. 1934, and is requested and directed to include in the transcript on appeal this stipulation.

John W. Holland,
JOHN W. HOLLAND,
United States Attorney for the Southern District of Florida.
Wm. A. Paisley,
WILLIAM A. PAISLEY,
Asst. United States Attorney for the Southern District of Florida,
Solicitors for the United States of America.

Signed upon the express condition (to which the United States of America has consented) that the entire deposition of T. A. McNicholas be inserted in the transcript, and the Clerk will please insert said deposition.

Herbert U. Feibelman,
HERBERT U. FEIBELMAN,
Solicitor for William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey.
WALLER & PEPPER,
Solicitors for D. M. Lowry, as Receiver for New Jersey Fidelity & Plate Glass Insurance Company in Florida.

476 In Circuit Court of Leon County

Consolidated Cause No. 3111

[Title omitted.]

Stipulation as to deposition of T. A. McNicholas

Filed Jan. 16, 1935

It is stipulated and agreed between the appellant, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, and the United States of America, that the deposition of T. A. McNicholas may be included in the transcript of record.

Dated this 9 day of January, A. D. 1935.

HERBERT U. FEIBELMAN,
Solicitor for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey.
JOHN W. HOLLAND,
United States Attorney for the Southern District of Florida.
WM. A. PAISLEY,
United States Attorney for the Southern District of Florida,
Solicitors for the United States of America.

477 In Circuit Court of Leon County

Consolidated No. 3111

[Title omitted.]

Deposition of T. A. McNicholas

Filed Nov. 23, 1934

STATE OF NEW JERSEY,
County of Essex, ss:

Timothy A. McNicholas, a witness produced in behalf of the complainant, William H. Kelly, as Commisisoner of Banking and Insurance of the State of New Jersey, being first duly sworn, deposes and says as follows:

Direct examination by SAUL NEMSER:

Q. Where do you live, Mr. McNicholas?

A. South [illegible], New Jersey.

Q. You a the Special Assistant Deputy Commissioner of Banking and Insurance of the State of New Jersey?

478 A. Yes.

Q. In charge of the liquidation of the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. Where is your office?

A. 31 Clinton Street, Newark.

Q. New Jersey?

A. New Jersey.

By Mr. HARLAN BESSON. I would like to note that the notice was limited to a single witness. I am going to be present here and I do not want my presence construed as a waiver of the rights of the United States on the form of notice that has been given. My plan is to participate in the examination so that in the event United States District Attorney Holland in Florida wants to withdraw any objection to the use of this testimony, he may do so. Do you understand, Mr. Nemser?

By Mr. NEMSER. I understand thoroughly.

Q. Mr. McNicholas, do you know the circumstances under which William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey took possession of the property and business of the New Jersey Fidelity & Plate Glass Insurance Company on May 28th, 1932?

A. Yes.

Q. What were those circumstances?

A. He was requested to take possession of the business and property by a resolution by the Board of Directors.

Q. Of the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. Is this a copy of the resolution? [Submitted a schedule.]
By Mr. HARLAN BESSON. May I see it?
A. This is a copy of the resolution.
Q. Have you seen the original?
A. Yes.
479 Q. In the minute book of the Company?
A. Yes.
Q. This will be marked "Exhibit C."
By Mr. HARLAN BESSON. Subject to my appearance here.
A. For the purpose of identification I have written my name across the resolution.
By MEYER Q. KISSEL, Notary Public. Is it offered into evidence?
By Mr. SAUL NEMSER. Yes.
By MEYER Q. KESSEL, Notary Public. Be allowed. Exhibit C.
Q. How long have you been connected with the Department, Mr. McNicholas?
A. Since 1923.
Q. In what capacity?
A. Examiner, Assistant Chief Examiner, and Special Assistant Deputy Commissioner.
Q. Are you familiar with the Insurance Laws of New Jersey?
A. Yes.
Q. Especially with the liquidation section, 56A?
A. Yes.
Q. As amended by Chapter 244, Laws of 1931?
A. Yes.
Q. Under the Insurance Laws, did the Commissioner of Banking and Insurance take possession by authority of any Court order?
A. No.
Q. What are the proceedings? How do you go about it?
A. Upon receiving orders from the Commissioner to do so, a Deputy steps into the Company and informs the officers that the Commissioner is in possession, and posts a notice on the doorway or entrance to the Company office, which is information to the general public that the Commissioner has taken possession of the business.
Q. That's the only physical evidence of his taking possession?
A. That's all.
Q. How about the banks and the checks?
A. The banks and anyone else in possession of any assets are immediately notified.
480 Q. Do you know whether the New Jersey Fidelity & Plate Glass Insurance Company had a deposit with the Banking and Insurance Department?
A. I think it had.
Q. How much?
A. $364,000.00. Par value.
Q. Of what?
A. Municipal or government bonds.

Q. Was that deposit made under the Insurance Laws as shown by Exhibit "A"?

A. It was.

Q. And can you tell us why the deposit was in that particular amount?

A. Yes. The deposit required of domestic Companies is only $50,000.00. However, Companies which are doing business in other jurisdictions are sometimes required to make larger deposits to comply with the requirements of those other jurisdictions, and under our laws we are permitted to accept such deposits in order to permit the Companies to qualify in such jurisdictions.

Q. That's how the New Jersey Fidelity & Plate Glass Insurance Company was compelled to deposit the sum of $360,000.00 in securities?

A. Yes.

Q. And may I call your attention to Paragraphs 6, 7, 8, 9, 10, and 11, of the Insurance Laws of the State of New Jersey, as shown by Exhibit A beginning with Page 12 thereof, to and including Page 16, and ask you whether those sections are the ones that provide for the capital of domestic companies and securities thereunder?

A. Yes.

Q. Is there anything in the Insurance Laws of the State of New Jersey whereby this deposit of $360,000.00 put up by the New Jersey Fidelity & Plate Glass Insurance Company is for the benefit of the New Jersey Fidelity & Plate Glass Insurance Company?

481 A. No.

Objection by Mr. HARLAN BESSON. I object to this, on the ground that the statute speaks for itself.

Q. Your answer is no?

A. It is no.

Q. Is this deposit for the benefit of all creditors of the New Jersey Fidelity & Plate Glass Insurance Company, regardless of residence?

A. It is.

Q. Do you know of anything in the Insurance Laws, either by way of statute, order, rule, or regulations, which discriminates in favor of New Jersey resident creditors as against nonresident creditors?

A. I do not.

Q. In your experience have you seen any preference shown to New Jersey creditors?

A. I have not.

Q. Since May 28th, 1932, what have been the Commissioner's acts? Is he liquidating the Company, or trying to put the Company into such shape as to do business?

A. He is liquidating it.

By MEYER Q. KESSEL. You are speaking with reference to the Company in question?

By Mr. NEMSER:

A. Yes. The New Jersey Fidelity & Plate Glass Insurance Company.

Q. May I show you what purports to be a copy of an order entered on October 27th, 1934, in the Circuit Court of the Second Judicial Circuit in and for Leon County, State of Florida, in Chancery, in a cause entitled "The London Operating Company, a Florida corporation, complainant, vs. New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, et als., defendants, in which are listed certain claims including the claim of Dade County, Burbridge Realty Co., Jay-Thorpe, Inc., Hernando State Bank,
482 Paul D. McGarry & John C. Sullivan, First State Bank of Eustis, Barnett National Bank of Jacksonville, E. W. Iandre, Pearce Produce Company, London Operating Company, and to which reference is made to the relative rights of the United States and to the claims of Snedigar & Baya, N. R. Robinson, and Joseph M. Schlesinger. I ask you whether the creditors whose names I have mentioned have filed claims with William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, here in New Jersey?

A. All with the exception of those of Dade County?

Q. In your official capacity, are you familiar with the assets and liabilities of the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. Do you make regular reports as to the condition of the Company?

A. When the Commissioner asks for them, we make the reports.

Q. When was the last report that you made?

A. May 28th, 1934, which has not yet been filed.

Q. Can you tell us from that report what the assets were as of that date?

A. Yes. The assets at that time had a book value of $3,502,368.45.

Q. What did those assets consist of?

A. Do you want that in detail?

A. No. General nature.

A. Cash about $250,000.00; receivables of various kinds about $160,000.00; State, County, and Municipal bonds, $1,000,000.00.

Q. Are those bonds quoted on the New York Stock Exchange?

A. No. Most municipals are not mentioned on the exchange. They are what we call "over-the-counter securities." About $1,000,000.00 worth of first-mortgage loans on real estate; one quarter of a million of real estate; the balance of the assets consist of various orders, and there is included assets in the hands of ancilliary receivers.

Q. Now, these bonds which you say have an over-the-
483 couter market, is there any difficulty of disposing of them for cash if you so desire?

A. No. Mostly New Jersey Municipals.

Q. Tell us what the liabilities were of that date?

A. The total amount of claims filed with the primary liquidator, $59,721,264.87.

Q. Filed with the Commissioner right in Newark?

A. Yes.

Question by WITNESS. Do you want the claims which have been approved? $677,000.00 approximately; the claims which were rejected are $4,650,000.00 approximately. There is still in the process of adjustment claims amounting to about $54,000,000.00.

Q. How many claims in number?

A. 4,729.

Q. Practically most of your time is being spent in the adjudication of these claims.

A. To a large extent.

Q. Based upon your experience in the adjudication of claims, so far as you can tell, what percentage would there be of rejections and approvals of the New Jersey Fidelity & Plate Glass Insurance Company as to the amount of claims allowed?

Objection by Mr. HARLAN BESSON. Objected to on the ground that there is no basis for any such prophetic statement.

A. You have to keep in mind that a lot of those not yet disposed of are contingent claims, possibly $35,000,000 of the $54,000,000 of them are contingent.

Q. What do you mean?

A. Not matured claims. Claims based on guarantees, and where liability against the Company has not matured.

Q. And some which may never mature?

484 A. Which may never mature possibly. Bearing that in mind, the first guess I can make is that the claims as ultimately allowed will be somewhere between ten and fifteen million dollars.

Q. Now did this New Jersey Department enter into any agreement with Departments of any other States regarding liquidation of the assets of this Company?

A. Yes. With the Insurance Department of the State of New York.

(Continuation of answer) and of Pennsylvania.

Q. What is done under these agreements?

A. The agreements provide generally that the ancillary liquidator will collect the assets and advertise the claims within their jurisdiction, and that they will then remit to the primary liquidator the assets less their expenses, and the claims after they have adjudicated go to share in the general distribution.

Q. Do you know in how many States the New Jersey Fidelity & Plate Glass Insurance Company was authorized to transact business?

A. Thirty-five. Do you want the names?

Q. No. Thirty-five States in the United States?

A. Yes.

Q. Did the Commissioner of Banking and Insurance advertise in those States?

A. Yes.

Q. In how many States did you advertise?

A. I would say thirty or thirty-one. He did not advertise in States where ancillary receivers had been appointed by the Courts.

Q. What are they?

A. Illinois, Minnesota, Missouri, West Virginia, Pennsylvania.

Q. How about Maryland?

A. Maryland is right. I am not sure of that because some of these receivers were appointed after our advertising was
485 finished.

Q. Now did the New Jersey liquidator advertise for claims in the State of Florida?

A. Yes.

Q. In what papers?

A. I don't recall the names. Miami papers.

Q. The Miami Herald?

A. I don't remember the name.

Q. What are the dates the Commissioner advertised?

A. I don't remember the dates precisely, but it was sometime during the last six months of 1932, and the advertisement would appear weekly for thirteen consecutive weeks as required by our statute.

Q. Can you tell us what the New Jersey liquidators expended in advertising?

A. In the neighborhood of $5,000.00.

Q. Can you tell us when the New Jersey Fidelity & Plate Glass Insurance Company deposited the securities with the State Treasurer of Florida as a condition precedent to doing business in that State?

A. I don't recall exactly. During 1930.

Q. How much was the deposit?

A. $75,000.00 in bonds of the State of Vermont.

Q. Do you know when the New Jersey Fidelity & Plate Glass Insurance Company was chartered?

A. 1868.

Q. Do you know under what Act?

A. A special Act of the legislature.

Q. Do you know whether this charter has been amended?

A. Yes. There were various amendments to the charter, the most important one of which was in 1923, when they filed an amended certificate of incorporation under the provisions of
486 the General Insurance Laws which had been enacted since they were first organized.

Mr. McNicholas, what provisions or rules or regulations the Commissioner in regard to claims that are disposed of insofar as giving creditors opportunity for hearing?

Q. So far as possible, we dispose of disputes by correspondence, and when that is impossible they set a date for a hearing at which either the claimant or his attorney appears. The laws give us authority to compromise on claims, which we do after a hearing. We go to the greatest possible extent to give all creditors every possible chance to prove their claims.

Q. Have you in your experience liquidated any other Insurance Companies other than the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. What Company was that?

A. The only one which I have completed is the Washington Casualty Insurance matter.

Q. Was that a corporation of New Jersey?

A. It was.

Q. Were there any nonresident creditors in that case?

A. There were.

Q. Approximately how many?

A. Comparatively few in number. I would say there were possibly ten or fifteen New York creditors in that Company.

Q. Can you give us an idea as to the aggregate amount of claims off-hand?

A. I can't.

Q. Were they treated on a par and parity with New Jersey creditors?

A. They were.

Q. How much were they paid?

487 A. 100%.

Q. Same as New Jersey creditors?

A. Same as New Jersey creditors.

Cross examination by Mr. HARLAN BESSON:

I direct your attention again to that Exhibit C which was offered in evidence, and ask you if you know under what portion or under what language of 56A, which is Chapter 244 of the Laws of 1931, the Commissioner exercised authority to take over the affairs of this Company?

By MEYER Q. KESSEL. What page is that?

By Mr. HARLAN BESSON. I am directing the witness' attention to Page 40 of the pamphlet marked "Exhibit A." He took possession in this case first because he was requested to do so by the Board of Directors as shown in this resolution.

A. But their action was based on the hazardous condition of the Company.

Q. I know, but will you point to the portion or language as you know of the statute, under which jurisdiction was taken to act?

A. I would say under these provisions. "Whenever the Commissioner of Banking and Insurance shall ascertain as a result of an examination as authorized by this Act, that the Company's condi-

tion or methods of business are such as to render the continuance of its operations as hazardous to the public or to its policy holders." I know that he did make such an examination.

Q. And that the request set forth in this resolution, Exhibit C is what prompted the action of the Commissioner?

A. I would say that was what culminated the transactions.

Q. Well, the Commissioner had made an examination prior to the execution of the resolution?

A. That's right.

Q. And warned the Company that its condition was hazardous?

A. That's right.

Q. And took the Company or the complete matter into possession.

488 A. Correct.

Q. Prior to that it reinsured its risks? All of its risks?

A. It did, but not all. There were some exceptions.

Q. The Re-Insuring Company was the Commercial Casualty Insurance Company?

A. Yes.

Q. Is that Company still in existence?

A. Yes.

Q. It has not been absorbed by any other Company?

A. Yes.

Q. Was it doing business under its charter in the State of New Jersey and other parts of the United States?

A. Yes.

Q. The New Jersey Fidelity & Plate Glass Insurance Company transferred, or rather the New Jersey Fidelity & Plate Glass Insurance Company at New Jersey transferred to the Commercial Casualty Insurance Co., a great part of its assets, didn't it?

A. Yes.

Q. To what amount, if you know?

A. Approximately one million dollars.

Q. Now; when it had transferred those assets, how much money still remained on deposit with the Commissioner in the State of New Jersey?

A. You mean security?

Q. An attempt to transfer any of the assets deposited with the Commissioner of Banking and Insurance of the State of New Jersey.

A. No. It did not attempt to do that.

Q. Was any transfer in fact permitted by the Commissioner?

A. That question was not raised.

Q. But has been in other cases?

489 A. Yes.

Q. Directing your attention to the provisions of Section 8, which is Page 14 of the pamphlet marked "Exhibit A", there is a requirement that a Company engaged in business under the Insurance Act must make a deposit of certain types of securities with the State Commissioner of Banking and Insurance?

A. That's right.

Q. These deposits are maintained, in Section 10 of the same Act, Page 16, for the benefit of policyholders?

A. That's right.

Q. That is, all the policyholders of the Company?

A. All the policyholders.

Q. Now to what extent do the policyholders have a preference as against the assets of the Company, do you know about that?

A. I don't know that I can answer that.

Q. Well, you have said that all creditors came on an even basis.

A. That is right. In practice when a Company is in liquidation, those assets in all cases that I am familiar with, have been turned over as general assets.

Q. So the policyholders have no power whatsoever?

A. Not after the Company has failed.

Q. That deposit is more of a condition precedent to getting a license to do business. You know of no Court having passed upon that?

A. No.

Q. Have you ever been advised by your counsel on the subject?

A. No. The only case where we have used the security in a liquidation which I handled, was a Company which paid all its claims in full, so that no question of preference ever arose.

Q. I see. Well now, how much is the deposit of securities in this particular case that was made with the State Commissioner of Banking and Insurance, under the provisions of Section 8 of the Insurance Act?

490 A. When we took possession it was $364,000.00, and it has since been reduced by $11,000.00 which matured, the Commissioner, however, continuing to hold that $11,000.00 with the remaining securities.

Q. So that there is a fund of $364,000.00 which had its origin with this deposit of securities?

A. Yes.

Q. Which may or may not be for the benefit of policy holders?

A. Yes.

Q. Now, do you know what deposit was made for the benefit of policyholders in oher States by the same Company, the New Jersey Fidelity & Plate Glass Insurance Company?

A. Yes.

Q. What was the deposit made in Florida?

A. $75,000.00 worth of bonds of the State of Vermont.

Q. And that is the fund which is in part the subject of controversy here?

A. Yes, sir.

Q. Have you ever heard in any of the proceedings that you have been conducting regarding the liquidation of these companies, this company, or any other company, under the Insurance Act, of an

application for a preference? Under the provision of Section 10 of the Insurance Act? Page 16 of the Pamphlet?

By MEYER Q. KESSEL. That is Exhibit A.

A. There is a proceeding ending now in the Public Indemnity Company, in which a judgment creditor is asking preference against the fund deposited with the Commissioner.

Q. But I refer particularly to a claim by a policyholder?

A. This is a policy holder who has reduced his claim to judgment.

Q. And he is asking preference?

A. Yes.

Q. Now this Exhibit C, the resolution, is practically an
491 assignment, is it not, to your Company for the benefit of the creditors of the New Jersey Fidelity & Plate Glass Insurance Company?

A. I think so.

Q. And then all of the assets of the Company, with the exception of those turned over to the Commercial Casualty Insurance Company, were turned over to the State Banking and Insurance Commissioner, Mr. Kelly?

A. Yes.

Q. Now, you have had cases where the United States made a claim for a preference under Section 34-66, haven't you?

A. Yes.

Q. No definite ruling has been made in any of those cases?

A. No.

Q. I limit that one to Insurance Companies at the present time. You have had applications in this?

A. We haven't in this Company.

Q. You have made no ruling as yet?

A. No.

Redirect examination by Mr. SAUL NEMSER:

Q. What did the New Jersey Fidelity & Plate Glass Insurance Company get in return for the one million dollars given to the Commercial Casualty Insurance Company?

A. The Commercial Casualty agreed to assume its liabilities, amounting to about a million and one-half, plus an undetermined amount of contingent liabilities arising out of the contract.

Q. Did the New Jersey Fidelity & Plate Glass Insurance Company gain or lose?

By Mr. HARLAN BESSON. Objected to.

A. I would say gained.

Q. How much?

A. Between $400,000.00 and $500,000.00.

492 Q. Do you carry the securities deposited with the Commissioner in the sum of $360,000.00 as general assets on your books?

A. Yes.

Q. Books of liquidation of the Company?

A. Yes.

Recross-examination by Mr. HARLAN BESSON:

Q. At the time this Company was taken over by the State Commissioner, was it in your opinion and in the opinion of the Department, speaking as a Deputy Commissioner of Banking and Insurance, was this Company, the New Jersey Fidelity & Plate Glass Insurance Company, an insolvent corporation?

A. I don't know that I could say whether it was insolvent or not. Its condition was hazardous.

Q. It couldn't conduct business?

A. Not with the consent of our Department.

Q. It did not have sufficient capital, did it, to continue business?

A. Yes; it had sufficient capital. It was more a question of cash.

Q. It didn't have the cash to carry on the business?

A. That's right.

Q. And how long after this request that was made in the matter was the resolution made?

A. On May 28th, 1932.

Q. Was the Company taken over by the State Commissioner of Banking and Insurance?

A. The same day.

Redirect examination by Mr. SAUL NEMSER:

Q. Saturday, May 28th, 1932?

A. We took possession at the close of business, which happened to be at noon, Saturday.

Q. As a matter of fact, the examinations by the State Banking and Insurance Department of this Company were conducted
493 for a period of months prior to May 28th, 1932?

A. That's right.

Q. Did that not culminate in a statement by the Commissioner that an additional sum of one million dollars be placed?

A. I forget the sum.

By Mr. HARLAN BESSON:

Q. You have stated before that there are claims against this Company aggregating more than $59,000,000.00?

A. Yes.

Q. And the total assets don't exceed $2,000,000.00?

A. Three and one-half. Book value.

Q. How are they arrived at?

A. Cost.

Q. Cost and not market value?

A. As a matter of fact, the market value at the present time is less than the book value.

Q. Can you tell us what assets they are?

A. Practically all the New Jersey municipals, as bonds are selling below par.

Q. Of course, this includes a lot of bonds which are not below par?

A. Not far below. At the present time we have some $400,000.00

worth of Home Owners' Loan Corporation bonds which are always at par.

(Counsel for the respective parties hereto, by stipulation, have agreed to waive the reading and subscribing of the depositions by the witnesses.)

STATE OF NEW JERSEY

County of Essex, ss:

I, Meyer Q. Kessel, being a Notary Public of the State of New Jersey, do hereby certify that pursuant to the attached notice
494 in the above entitled cause, wherein William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, and the London Operating Company, a Florida corporation, are complainants, and W. V. Knott, as State Treasurer and ex-officio Insurance Commissioner of the State of Florida, and New Jersey Fidelity & Plate Glass Insurance Company, a corporation organized under the insurance laws of the State of New Jersey, are defendants, now pending in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, I sat at 1060 Broad Street, Newark, New Jersey, at the time stated in said notice and hereinabove, and was attended by Saul Nemser and William Donnolly, appearing for John Milton, appearing in behalf of Herbert U. Feibelman, Solicitor and of Counsel for the complainant, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, and Harlan Besson, United States District Attorney for the District of New Jersey, appearing for John W. Holland, United States District Attorney for the Southern District of Florida, representing the United States of America, and the said witnesses, Pierre P. Garven, and Timothy A. McNicholas, who were by me first duly cautioned and sworn to testify the whole truth, and carefully examined, and thereupon testified as is hereinabove shown, and the testimony of said witnesses was reduced to typewriting by Dorothy Thompson, after being duly sworn according to law, under my personal supersioner of Banking and Insurance of the State of New Jersey, and by the said witnesses was waived by stipulation of counsel for the respective parties.

I further certify that there was offered into evidence, as is hereinabove shown, three exhibits, respectively marked Exhibit "A", "B", and "C" which are hereby included in the return made by me.

I further certify that the said depositions were taken at the
495 place and time specified in the aforesaid notice and hereinabove, or at regular adjournments thereafter; and I further certify that the reason for the taking of said depositions was and is, that the said witnesses reside out of the County in which this cause is pending; and that I am neither of Counsel nor Solicitor to either of the parties in said suit, nor interested in the event of the cause.

I further certify that I have retained the said depositions for the purpose of sealing up the same and directing it with my own hand

to the Court for which it was taken, and sending the same to the Clerk of said Court by United States mail, and there to remain under seal until the same shall be opened.

Witness my hand and official seal in the City of Newark, County of Essex, and State of New Jersey, this Twentieth day of November 1934.

[SEAL] MEYER Q. KESSEL,
A Notary Public of New Jersey.

My commission expires November 2nd, 1939.

496 Offered in evidence by Mr. Saul Nemser.

Exhibit B to deposition

November 19, 1934. Meyer Q. Kessel, Notary Public of N. J. Filed Nov. 23, 1934. Paul V. Lang, Clerk.

STATE OF NEW JERSEY

Insurance Laws 1933–1934

Chapter 44, laws of 1933

An Act to amend an act entitled "An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this state," approved April third, one thousand nine hundred and two.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Section five of the act to which this act is an amendment be, and the same is hereby, amended so as to read as follows:

5. Upon executing the certificate of incorporation and causing the same to be recorded and filed as aforesaid the persons signing the same, their successors and assigns, shall from the date of such filing be and constitute a body corporate by the name set forth in said certificate; no such company, however, shall transact the business for which it is incorporated until it has received a certificate of authority from the Commissioner of Banking and Insurance as
497 hereinafter provided, and if any such company shall fail to obtain such certificate of authority within one year from the date of the certificate o fthe Attorney General to its certificate of incorporation, as provided in the preceding section hereof, such company shall, ipso facto, be dissolved and its certificate of incorporation shall be null and void.

2. This act shall take effect immediately.

Approved March 8, 1933.

Chapter 45, Laws of 1933

A Supplement to an act entitled "An act to provide for the regulation and incorporation of insurance companies and to regulate the

transaction of insurance business in this State", approved April third, one thousand nine hundred and two.

Whereas, A public emergency exists by reason of the abnormal disruption of economic and financial processes which affects the conduct of the business of insurance in a normal and ordinary manner; therefore,

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The Commissioner of Banking and Insurance of this State shall have power to make, alter, amend, and rescind rules and regulations imposing any condition upon the conduct of the business of any insurance company which may be necessary or desirable to maintain sound methods of insurance and to safeguard the interests of policyholders, beneficiaries, and the public generally, during the period of such emergency, which rules and regulations shall become inoperative when such emergency shall cease, and an order to that effect shall be made by said commissioner.

2. This act shall take effect immediately.

Approved March 10, 1933.

498 Chapter 71, Laws of 1933

An Act concerning guaranteed mortgages and interests in or obligations secured by mortgages issued by or guaranteed by any insurance company, mortgage guaranty company, bank, trust company, or other company of this State, and conferring powers upon the Commissioner of Banking and Insurance with respect thereto, and upon such companies.

Whereas, A public emergency exists by reason of the abnormal disruption of economic and financial processes affecting the conduct of the business of mortgage guaranty companies; and

Whereas, It is essential, in the public interest, that the integrity of mortgage investments be preserved, that unnecessary foreclosure of mortgages be avoided, that the liquidation of mortgage investments be conducted in an orderly manner, that opportunity be afforded for the readjustment of mortgages to meet changed conditions and that this opportunity be extended beyond the period of disturbed banking and financial conditions, and continue during the operation of normal recuperative economic processes; and

Whereas, It is essential, in the public interest, that assets securing guaranteed mortgage investments be held, administered, and conserved in the interest of the holders thereof in such manner that such assets be held available for their security ratably and equitably; and

Whereas, For the effectuation of those ends it is necessary and in the public interest that such holders of guaranteed mortgage investments and such mortgage guaranty companies be empowered, under regulation by the Commissioner of Banking and Insurance, to make readjustments and to take all steps appropriate thereto; therefore,

499 Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. It is hereby declared and enacted that the provisions of chapter forty-five of the laws of one thousand nine hundred and thirty-three, entitled "A supplement to an act entitled 'An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State', approved April third, one thousand nine hundred and two", approved March ninth, one thousand nine hundred and thirty-three, are intended to and shall apply to the conduct of the business of insurance against loss by reason of the nonpayment of principal and interest of bonds and mortgages, including the issue of bonds, debentures, or certificates against mortgages of by any insurance company, mortgage guaranty company, bank, or trust company or other company of this State (hereinafter called, for the purpose of this act, "mortgage guaranty company"), incorporated under any general or special law of this State, which has issued or guaranteed bonds and mortgages, or shares or parts of mortgages, or mortgage participation certificates, or shares or parts of bonds secured by mortgage, or bonds secured by trust mortgage or participation certificates or coupon bonds entitling the holder to a proportionate share in a series or number of mortgages and bonds, or extensions or renewals thereof, or other obligations directly or indirectly secured by bonds and mortgages (hereinafter called "mortgages or interests in mortgages"), and are intended to and shall apply to the conduct of such business by any subsidiary of any such company, and, to the extent to which the provisions of this act are properly applicable, to any such company now in the possession of the Commissioner of Banking and Insurance of this State.

2. The Commissioner of Banking and Insurance in addition
500 to all other powers vested in him under the act mentioned in the preceding section, or otherwise, shall have power, from time to time, and whenever he shall think it expedient for the purpose of the conservation of the assets of any such mortgage guaranty company, or for the purpose of securing a ratable and equitable application of the capital, surplus, and reserves of such company among persons entitled to claims against the same as security for or in payment of the obligations of such company in respect of such mortgages and interests in mortgages, or otherwise in the public interest, after such notice or hearing in any case as he shall deem appropriate, by general or special orders or regulations, in general or particular instances, from time to time by him made and promulgated, extended, modified, or revoked, and enforced:

(a) To suspend, in whole or in part, the payment of interest by any such mortgage guaranty company to the holders of mortgages or interests therein, except such part thereof as shall be or shall have been actually paid to such company by mortgagors, tenants, or others from whom such payments are due, in whole or in part, and shall be available for payment to such holders, and to regulate the amount, time, and method of the payment or distribution of such interest, including such receipts, to such holders;

(b) To suspend, in whole or in part, the payment of principal by any such mortgage guaranty company to the holders of mortgages or interests therein, except such part thereof as shall be or shall have been actually paid to such company by mortgagors, tenants, or others from whom such payments are due, in whole or in part, and shall be available for payment to such holders, and to regulate the amount, time, and method of the payment or distribution of such principal, including such receipts or proceeds of sale of real estate to such holders;

501 (c) To suspend the prosecution or enforcement of, or payment of, any claim by any such holder against any such company upon any guaranty or other obligation or claim in respect of such mortgages or interests in mortgages, and to regulate the time, method, ascertainment, and establishment of the amount of any such claim and its enforcement, except with respect to moneys actually paid to such company by mortgagors, tenants, obligors, or others from whom the same may be due, or proceeds of sale of real estate, and which shall be available for payment to such holders entitled thereto, and to regulate the amount, time, and method of the payment or distribution of assets available for payment, including such receipts or proceeds of sale of real estate, to such holders;

(d) To authorize or require any holder of any such guaranteed mortgage to elect either to accept an assignment of such mortgage, or a deed of the mortgaged premises if foreclosed, or of the decree if in the proceeds of foreclosure, and to surrender any claim against such company on its guaranty or other obligation in respect thereto, on such terms and conditions as the commissioner shall determine, or to consent to and be bound by all of the provisions of this act and of all orders or regulations made under the terms thereof;

(e) With the consent of the respective holders of not less than two-thirds of the face amount of shares or parts of mortgages or mortgage participation certificates, or shares or parts of bonds secured by mortgage or bonds secured by trust mortgage or participation certificates or coupon bonds entitling the holder to a proportionate share in a series or number of mortgages and bonds, or examinations or renewals thereof, or obligations secured directly or

502 indirectly by mortgages (hereinafter called "interest in mortgages"), exclusive of such interests in mortgages as are held by the company guaranteeing the same or obligated upon the same, or any subsidiary thereof, to authorize or require the alteration or amendment or waiver of any of the terms and provisions of the same, or of the mortgage or trust mortgages or indentures securing the same, including the maturity of and the rate of interest on the same, or provisions relating to defaults thereunder, in which such holders are respectively interested;

(f) With like consent, to authorize or require that a portion, not exceeding forty per centum (40%), of the claims against or obligations of such company with respect to the principal of such interests in mortgages in which such holders are respectively interested, be

converted into income bonds or debentures or deferred obligations or preferred stock of such company, cumulative or noncumulative, in series or otherwise, entitling the holder, upon ultimate payment or retirement or upon the dissolution and liquidation of the company, to a principal amount equivalent to the portion so converted, which preferred stock may be with or without par value, in whole shares or in fractions, with such voting powers, preferences, relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof, as shall be determined on the issuance thereof;

(g) With like consent, and also with the consent of two-thirds of all of the stockholders of such company having voting power thereon, to authorize or require the adoption of a general or partial plan of reorganization and/or readjustment of all or a part of the obligations, capital stock, assets and liabilities, and affairs, of any such company;

503 (h) With the like consent of such holders, to authorize or require the modification or suspension of requirements for the substitution of properties or assets held as security for or deposited against such interests in mortgages;

(i) To suspend the enforcement of any obligation or duty of any such company with respect to instituting or continuing the foreclosure of any mortgage or the sale of any real estate acquired through foreclosure or conveyance, or the enforcement of any deficiency upon any bond secured by mortgage;

(j) For the preservation of the trust and protection of those interested therein, to suspend the enforcement of any of the provisions of, or remedies provided by, or to relax provisions of, or to authorize or require the departure from the terms or provisions of and vary or modify the operation of the provisions of, any trust mortgage or trust indenture or collateral trust mortgage or indenture, made by any mortgage guaranty company, securing bonds or debentures or shares or parts of bonds or debentures, or bonds or debentures or certificates entitling the holder to a proportionate share in a series or number of mortgages or other obligations directly or indirectly secured by mortgages;

(k) To initiate and promote measures for the sound readjustment of the respective interests of such companies, the holder of guaranteed mortgages and interests in mortgages, and mortgagors and owners;

(l) To regulate the establishment and use of reserves of such companies;

(m) To allocate, prohibit or suspend the disbursement of funds by any such company, and to regulate the amount, time, and method of distribution of proceeds of mortgages, or of foreclosures, or of sales of real estate.

504 3. Nothing in this act contained is intended to preclude recourse to the courts of this State, by the appropriate remedy,

for the review of an order or regulation made by the Commissioner of Banking and Insurance under the provisions of this act.

The Commissioner of Banking and Insurance shall have power to enforce the provisions of this act and any order or regulation made thereunder, in the manner and by the same remedies as are provided in section fifty-six (56) of the act entitled "An act to provide for the regulation and incorporation of insurance companies, and to regulate the transaction of insurance business in this State", approved April third, one thousand nine hundred and two.

5. The orders and regulations made by the Commissioner of Banking and Insurance under the provisions of this act shall be binding upon and effectual as to all persons who may be affected thereby in any manner, including trustees or depositaries of mortgages against which or under which interests in mortgages are issued, and any such trustees or depositaries shall be relieved of responsibility for any act or omission in compliance with orders or regulations made under this act.

6. Every mortgage guaranty company within this State shall have and possess, and may exercise, all of the powers conferred upon corporations under an act entitled "An act concerning corporations" (Revision of 1896), approved April twenty-first, one thousand eight hundred and ninety-six, and the supplements and amendments thereto, including, except in the case of a bank or trust company, the power to issue preferred or special stock, so far as consistent with and incident to the exercise of any of the powers conferred
505 by this act; provided, that nothing in this act contained shall impair or diminish any powers heretofore conferred upon such companies.

7. Any such company shall have power to acquire, hold, and retain secondary or junior parts or portions of mortgages or interests in mortgages, with respect to which it is liable under its guaranty or otherwise, heretofore or hereafter issued, and in each such case any such interest shall be considered, subject to regulations by the Commissioner of Banking and Insurance, a proper, authorized, and legal investment of such company.

8. Any mortgage guaranty company may, with the approval of the Commissioner of Banking and Insurance, become a member of, and participate in the activities of, any real estate stabilization company or association, or any similar or other league or association or central reserve or underwriting agency, or company operating for the benefit of mortgage guaranty companies, now or hereafter created.

9. The Commissioner of Banking and Insurance shall not be liable in damages or otherwise to any person or be liable to be called in question, by reason of any error of judgment or mistaken exercise of discretion in the exercise of any of the powers conferred by this act.

10. Each order or regulation made by the Commissioner of Banking and Insurance under the provisions of this act shall be filed in the Department of Banking and Insurance. A copy thereof, certified

by the Commissioner of Banking and Insurance, shall be lawful evidence in all courts and places.

11. Any person acting as executor, administrator, trustee or in any other fiduciary capacity, and all banks, savings banks, trust
506 companies, insurance companies, and other corporations, within this State, and all officials of this State, the several counties, municipalities, and school districts therein, and of any public commission or body created under the laws of this State, shall, with respect to any mortgages or interests in mortgages held by them, have power to take any action or give any consent and enter into any agreement or plan authorized by the provisions of this act.

12. All courts within this State shall have power to, and it shall be the duty of all such courts to, stay or otherwise suspend the enforcement of any decree, order, process, or other proceeding therein in conflict with the provisions of this act, or with any order or regulation made or any action taken hereunder, and all such courts shall have power, and it shall be the duty of such courts, to take such other proceedings and make such decrees or orders as shall conform thereto and shall effectuate the purpose thereof.

13. The word "person" wherever used in this act shall include natural persons, partnerships, corporations, and associations.

14. This act shall become inoperative after three years from the date of its approval, but all orders or regulations made and all acts and things done under the provisions of this act shall be and remain valid and operative.

15. If any section or any portion of this act shall be questioned and shall be declared void, the remainder of the act shall, nevertheless, stand and be unaffected thereby.

16. All acts and parts of acts inconsistent with the provisions of this act are hereby suspended so far as inconsistent herewith, during the operation of this act.

17. This act shall be liberally construed for the effectuation of its purposes in all courts, in all places and by all public officers.

18. This act shall take effect immediately.

Approved March 16, 1933.

507 Chapter 105, Laws of 1933

A supplement to an act entitled "An act to provide for the regulation and incorporation of insurance companies, to regulate the transaction of insurance business in this State", approved April third, one thousand nine hundred and two.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. It shall be lawful for any insurance company heretofore or hereafter incorporated under the laws of this State to become a member of the Federal Home Loan Bank organized in the district in which such insurance company is located under the provisions of the act of Congress known as the "Federal Home Loan Bank

Act", approved July twenty-second, one thousand nine hundred and thirty-two; and such insurance company may subscribe for, purchase, hold, and surrender from time to time such amounts of the capital stock of such Federal Home Loan Bank as may be required under the said "Federal Home Loan Bank Act" or any amendment thereof in order to obtain and continue such membership or as such insurance company may desire to purchase or hold; and to become a member of such Federal Home Loan Bank and to assume all the responsibilities and to be entitled to all the benefits of such membership as imposed and conferred by the said "Federal Home Loan Bank Act."

2. This act shall take effect immediately.

Approved April 10, 1933.

Chapter 217, Laws of 1933

An act to amend an act entitled "An act to provide for the regulation and incorporation of insurance companies and
508 to regulate the transaction of insurance business in this State", approved April third, one thousand nine hundred and two.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Section two of the act to which this act is an amendment be and the same is hereby amended so as to read as follows:

2. No company shall be formed for the purpose of engaging in any other kind of insurance than that specified in some one of the subdivisions of the preceding section, or more kinds of insurance than are specified in a single subdivision, except that a company may be formed (1) for the purposes specified in subdivisions first, second, twelfth, and fifteenth; or (2) for the purposes specified in subdivisions third and fourth; or (3) for any or all of the purposes specified in subdivisions fourth to fifteenth, both inclusive. No policy for more than one of the kinds of insurance specified in the subdivisions of the preceding section shall be issued except as hereinafter provided. Risks specified in subdivisions fourth and fifth may be embraced in one contract; companies electing to issue policies on residence and private apartments may embrace in one contract risks specified in subdivisions fourth, fifth, sixth, tenth, eleventh, twelfth, thirteenth, and fifteenth, or any one or more of them; a policy of automobile insurance as authorized by subdivision second may include the risks specified in subdivision fifth to the extent of loss or damage resulting from the use or operation of automobiles described in the policy; provided, that such policy shall be in distinct and separable contracts of companies authorized to issue policies insuring the risks assumed; and a life-insurance company, whether incorporated under this or under a special act, may provide in its policies of insurance, or in separate policies supplementary
509 thereto, for the payment of a larger amount of insurance if death is caused by accident, and may incorporate therein, or in its annuity contracts, or in separate policies or contracts supplemen-

tary thereto, provisions for the waiver of premiums, and/or for the granting of other benefits, in the event that the insured becomes disabled from any cause.

2. This act shall take effect immediately.

Approved June 15, 1933.

Chapter 225, Laws of 1933

An Act to amend an act entitled "An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State", approved April third, one thousand nine hundred and two.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section eighty-one of the act of which this act is amendatory be and the same is hereby amended to read as follows:

81. The Commisisoner of Banking and Insurance may, upon application in such form as he may prescribe, license any suitable person as a broker to negotiate contracts of insurance or reinsurance or place risks or effect insurance or reinsurance for others than himself for a compensation, with any qualified domestic insurance company or its agents, or with the authorized agent in this State of any insurance company of another State or foreign country duly admitted to do business in this State; for such license a fee of twenty-five dollars shall be paid, authorizing the licensee thus to act until the thirty-first day of December then next, and on payment of a similar fee the license may be renewed from year to year. The Commissioner of Banking and Insurance may revoke any such license at any time for cause shown after hearing given to the licensee. Where an application is made by a corporation organized under the laws of a foreign State or jurisdiction to act as a broker, and it shall appear in such application by affidavit of the president or other officer of any such foreign corporation that the sole business sought to be transacted by such foreign corporation is that of a broker in the negotiation of contracts of insurance or reinsurance, or the placing of risks, or the effecting of insurance or reinsurance for others than for the corporation so applying, the commissioner may grant a license to act as broker, notwithstanding such corporation has not complied with the provisions of the general corporation act and obtained a license to transact business in this State; provided, that with the first application for such license after the passage of this act such corporation shall, by a duly executed instrument filed in the Department of Banking and Insurance, constitute the Commissioner of Banking and Insurance, and his successor in office its true and lawful attorney, upon whom all original process in any action or legal proceeding against it may be served, and therein shall agree that any original process against it which may be served upon said commissioner shall be of the same force and validity as if served on the corporation, and

that the authority thereof shall continue in force irrevocable so long as any liability of the corporation remains outstanding in this State; the serving of such process shall be made by leaving a
511 copy of the same in the office of the Commisisoner of Banking and Insurance with a service fee of two dollars to be taxed in the plaintiff's cost of suit, such service upon said commissioner shall be deemed sufficient service upon the corporation. When any original process is served upon the Commissioner of Banking and Insurance as attorney for any such corporation of another State or foreign country, as herein above provided, and a service fee of two dollars paid to said officer, he shall forthwith notify the corporation of such service by letter directed to its secretary, or in the case of a corporation of a foreign country to its resident manager, if any, in the United States; and shall within two days after such service forward in the same manner a copy of the process served on him to such secretary or manager, or to such other person as may have been previously designated by the corporation by written notice filed in the Department of Banking and Insurance; said commissioner shall keep a record of all such process, which shall show the day and hour of service; provided further, the laws or regulations of such foreign State or jurisdiction permit New Jersey corporations to act as such broker in such foreign State or jurisdiction under like circumstances as herein described.

2. This act shall take effect immediately.

Approved June 15, 1933.

Chapter 249, Laws of 1933

A Supplement to an act entitled "An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State", approved April third, one thousand nine hundred and two.

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Be it Enacted by the Senate and General Assembly of the State of New Jersey:

512 1. Any appointment by the Court of Chancery of a trustee or trustees for corporations incorporated under the act entitled "An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of business in this State", approved April third, one thousand nine hundred and two, as amended and supplemented, be and the same is hereby validated and confirmed as fully and to the same extent as if the appointment of said trustees was expressly authorized by statute at the time of such appointment.

2. All trustees heretofore appointed by said court, unless otherwise expressly provided in the order of appointment, be and they are hereby invested with title to the assets which are the subject of their trusts, and are empowered, subject to the control of the Court of Chancery, to pledge, sell, assign, transfer, convey, and otherwise deal with said assets by any proper instruments.

3. All deeds of conveyance, bills of sale, and other documents or instruments of transfer of title to real or personal property heretofore made and delivered by said trustees, or which may hereafter be delivered by the said trustees, subject to the control of the Court of Chancery, and all proceedings heretofore taken and now pending to foreclose mortgages forming part of said trusts, and all other legal proceedings instituted by said trustees, are hereby validated and confirmed to the same extent as if the appointment of said trustees was expressly authorized by statute and title of said assets also vested in the said trustees at the time of their appointment, and said trustees shall, subject to the control of the Court of Chancery, have full power and authority to foreclose mortgages, institute suits on bonds, and such other legal proceedings as may be appropriate or necessary in the administration of their trusts.

513 4. The said Court of Chancery shall have power in any cause in which trustees have been appointed for insurance companies incorporated under the act entitled "An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State", approved April third, one thousand nine hundred and two, as amended and supplemented, upon the application of the said trustees, or any person interested in said cause, after giving ten days' notice to such corporation and to such others as the said courts shall provide, to direct such insurance corporations, their officers and agents to execute such proper deeds of conveyances, bills of sale, and other instruments as the said court may direct transferring title to the assets of the said trusts to such trustees, and in the event of the failure or refusal of said corporation and its officers to execute such proper instruments as may be directed by the court, the court may make an order which shall have the same effect as if such deeds of conveyances, bills of sale, and other instruments were actually executed and delivered.

5. Each section of this act is remedial, and each section shall be considered as separate and independent and any rights or remedies granted as cumulative and as not affecting in anywise the inherent jurisdiction and power of the Court of Chancery over trusts, or avoiding any order or decree of the Court of Chancery heretofore made and if any section or provision of this act shall be declared unconstitutional the remaining sections or portions of this act shall stand.

6. This act shall take effect immediately.

Approved June 21, 1933.

514 (Special Session Laws—1933)

Chapter 1

An Act authorizing savings banks, banking institutions, trust companies, insurance companies, and building and loan associations organized under the laws of this State, mutual savings banks organ-

ized under any special charter or special law of this State, and executors, administrators, guardians, or trustees, to invest in and/or hold for investment, and accept in lieu of cash payment on account of indebtedness, or the sale or transfer of assets, bonds issued or hereafter issued by the Home Owners' Loan Corporation created under an act of Congress entitled "An act to provide emergency relief with respect to home mortgage indebtedness, to refinance home mortgages, to extend relief to the owners of homes occupied by them and who are unable to amortize their debt elsewhere, to amend the Federal Home Loan Bank Act, to increase the market for obligations of the United States, and for other purposes", approved June thirteenth, one thousand nine hundred and thirty-three.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. Any savings bank, banking institution, trust company, insurance company, or building and loan association, organized under the laws of this State, mutual savings banks organized under any special charter or special law of this State, and any person or corporation acting as executor, administrator, guardian, or trustee may invest in, hold for investment, and accept in lieu of cash, in reduction or in payment of indebtedness due any of the aforesaid, or in part payment or in full payment of the purchase price on the sale or transfer of any asset of any of the aforesaid, bonds issued or hereafter issued by the Home Owners' Loan Corporation, created under an act
515 of Congress entitled "An act to provide emergency relief with respect to home mortgage indebtedness, to refinance home mortgages, to extend relief to the owners of homes occupied by them and who are unable to amortize their debt elsewhere, to amend the Federal Home Loan Bank Act, to increase the market for obligations of the United States, and for other purposes", approved June thirteenth, one thousand nine hundred and thirty-three.

2. This act shall take effect immediately.

Approved September 28, 1933.

(Special Session Laws—1933)

Chapter 7

An Act to amend an act entitled "A supplement to an act entitled 'An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State', approved April third, nineteen hundred and two", which supplement was approved April third, nineteen hundred and twenty-eight.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Section two-a of the act to which this act is an amendment be and the same is hereby amended to read as follows:

2a. No stock company formed under this act shall create more than one class of stock, except, however, that preferred and/or nonvoting stock may be issued; provided, the amount of such stock so issued shall not at any time exceed the amount of common and/or voting stock then issued and outstanding; provided, further, that preferred stock may be issued without limitation when such preferred stock is to be purchased or loaned upon by any corporation, association, or agency created by or organized under any law of the United States of America.

2. This act shall take effect immediately.

Approved October 11, 1933.

516 Chapter 3, laws of 1934

(As Amended by Chapter 64, P. L. 1934)

An Act relating to mortgage guaranty corporations, mortgage investment corporations, title and mortgage guaranty corporations and insurance corporations engaged in the business of insurance against loss by reason of the nonpayment of principal and interest on bonds and mortgages, or which have issued guaranteed first mortgage trust certificates or guaranteed first mortgage participation certificates, providing for the conservation, rehabilitation, reorganization, or liquidation of such corporations, and relating to trusts and agencies created by or the result of instruments issued by said corporations, and conferring powers upon the Commissioner of Banking and Insurance and the Court of Chancery with respect thereto, and for the protection of holders of guaranteed mortgage investments.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. This act shall apply to any mortgage guaranty corporation, mortgage investment corporation, title and mortgage guaranty corporation, or other insurance corporation of this State incorporated under any general or special law, which has issued insurance against loss by reason of the nonpayment of principal and interest of bonds and mortgages, or which has issued guaranteed first mortgage trust certificates or guaranteed first mortgage participation certificates (hereinafter called for the purposes of this act, "mortgage guaranty corporation" or "company"); and also to any subsidiary of any such corporation or real estate or holding corporation controlled by any such corporation and holding title to real estate subject to the lien of mortgages guaranteed by any such corporation, or of mortgages securing its obligations or certificates issued by it, or

517 in which holders of its guaranteed mortgages or obligations or certificates have an interest as a result of the foreclosure of any such mortgages, to which subsidiary, real estate or holding corporation all of the provisions of this act shall apply to the same extent as to any such mortgage guaranty corporation. The

words "mortgage guaranty corporation (or company)" or "such corporation (or company)" or "the corporation (or company)" as used in this act shall be deemed to apply to and include any such subsidiary corporation, real estate or holding corporation. "Guaranteed mortgage investments" as used in this act shall include guaranteed bonds and mortgages or shares or parts of mortgages or mortgage participation certificates or shares or parts of bonds secured by mortgage or bonds secured by trust mortgage or participation certificates or coupon bonds entitling the holders to a proportionate share in a series or number of mortgages and bonds or extensions or renewals thereof, or other obligations directly or indirectly secured by bonds and mortgages.

2. The Commissioner of Banking and Insurance; any corporation to whom the provisions of this act apply, by authority of its board of directors given at a regular or special meeting, which said meeting may be called on one day's notice by mail (unless same be waived), or by authority of a majority of its board of directors evidenced in writing; ten per centum (10%) of the stockholders of any such corporation; or ten per centum (10%) of its creditors, absolute or contingent, may file a petition in the Court of Chancery, setting up that said corporation is insolvent, or has suspended its ordinary business for want of funds to carry on the same or that its condition or methods of business are such as to render the continuance of its operations hazardous to the public or to holders of its guar-
518 antees, or that its business has been and is being conducted at great loss and greatly prejudicial to the interests of its creditors and stockholders, or that the interests of its creditors, absolute or contingent, or of the public, or its stockholders, or the conservation of its assets or business require the intervention of the court, and the court, if satisfied of the sufficiency of the petition, without notice, or upon such notice as it may prescribe, if the application be made by or with the consent of the corporation, and with such notice as it may prescribe in other cases, may make an order adjudging the sufficiency of the application, and thereupon the Commissioner of Banking and Insurance shall become trustee of the said corporation, its assets and property, rights, credits, and interests, and of any subsidiary corporation (herein included in the term "corporation" or "company"), its assets and properties, rights, credits, and interests, and of any trust or trusts created by or the result of any instrument issued by said corporation in the course of its business or the result of any conduct of the corporation, the trust or trusts to be administered by the said Commissioner of Banking and Insurance subject to the supervision and control of the Court of Chancery in the administration suit and as a trust administered in that court.

If, at the time such application be made, there be a cause pending in said court looking toward the general administration of the assets, property, rights, credits, and interests of said corporation, the petition may be filed in said cause, and if the application be granted, the

cause shall proceed as if, in the first instance, commenced by a petition filed under the provisions of this act, the jurisdiction of the court relating to the time of the institution of the original proceeding, and if the petition under the provisions of this act be not
519 filed in said cause first commenced as aforesaid such cause and the proceedings initiated by petition under the provisions of this act shall be consolidated, with like effect.

3. The said court shall have power and authority in the initial order or any subsequent order upon such notice to parties who may be interested as it may prescribe to make orders and decrees authorizing and empowering the Commissioner of Banking and Insurance to exercise all or any of the following powers and duties; all of the powers of the corporation and its board of directors or officers, and its privileges and franchises, provided that no additional guaranties or similar obligations shall be created; except as hereinafter mentioned, all such powers as might be conferred upon a receiver of such a corporation by the court in the conduct of its business; in the name of the corporation or otherwise, to demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of such corporation or any such trust, and in his discretion to compound and settle with any debtor or creditor of such corporation or any such trust, or with persons having possession of its property or in any way responsible at law or in equity to such corporation or any such trust, upon such terms and conditions and in such manner as he shall deem just and beneficial to the corporation or trust, and in case of mutual dealings between the corporation and any person to allow just setoffs in favor of such persons in all cases in which the same ought to be allowed according to law and equity; to sell, convey, and assign all or any part of the said estate, rights and interests, including bills, notes, and choses in action of said
520 corporation or any such trust; in the name of such corporation or otherwise to prosecute and defend any and all suits and other legal proceedings and in the name of such corporation or otherwise, execute, acknowledge, and deliver any and all deeds, assignments, releases, warrants to cancel mortgages, and other instruments necessary or proper to effectuate any sale of real or personal property, or to compromise or compound claims or to restore to any person any property deposited or transferred as security for the payment of any debt or the performance of any obligation upon the payment of such debt or the performance of such obligation, and any deed or other instrument executed pursuant to the authority hereby given, shall be valid and effectual for all purposes, as though the same had been executed by the officers of such corporation by authority of its board of directors; to deposit the moneys collected or in the hands of the Commissioner or under his control in one or more national or State banks, savings banks or trust companies, within this State or the City of New York, which said deposits

shall be entitled in case of insolvency or liquidation of the depository to such priority in payment as may be given to deposits of public funds under the applicable banking law; to temporarily invest any such moneys in obligations of the United States of America; to, either personally or by any assistants designated by him, subpoena witnesses to compel their attendance, to administer an oath, and to examine any person under oath, before him, or before any assistant duly designated for such purpose, and in connection therewith require the production of any books or papers relevant to the inquiry, and if a person subpoenaed to attend such inquiry fails to obey the command of a subpoena without reasonable excuse or a person in attendance upon such inquiry, shall, without reasonable cause,
521 refuse to be sworn or to be examined, or to answer a question, or to produce a book or paper when ordered to do so by the officer duly conducting such inquiry, or if any corporation, association, partnership, or individual fails to perform any act required hereunder to be performed, the Court of Chancery, upon proper application and upon such notice as it may prescribe may direct the performance of the act, and in case of the failure of any such corporation, association, partnership, or individual to obey the order of the said court it or he shall be guilty of, and punishable for, a contempt of that court; to receive, collect and sue for the interest and principal of any bonds, mortgages, or other security held by or under the control of such corporation or in any trust created by or the result of any instruments issued by said corporation in the course of its business or as a result of any conduct of the corporation, or with respect to which the corporation has an agency by any instrument or by any foreclosure or other action thereon, take title to the property sold under such action or deeded by any mortgagor or owner, in such form and manner as he or the said court may determine; to with the consent where required of all of the persons interested in any specific mortgage or property, or with the consent where required of two-thirds in interest of such persons and with the approval of the court, extend and renew mortgages, sell, convey, and realize upon the same or any real estate and other assets, at such prices and on such terms, including the taking of security for part of the purchase money, as shall be deemed advantageous, or lease, exchange, and otherwise deal with and dispose of, all such mortgages, real estate, and other assets which may come to his possession; to turn over to holders of guaranteed mortgage investments, mortgages to which they are entitled under the assignments or certificates or other instruments held by them, or the properties held as a
522 result of the foreclosure thereof, or the foreclosure decree in such case, and to agree upon and compound and settle claims by or against the corporation in respect thereto, including the adjustment and the payment or collection or postponement or securing the equities or interests of the corporation therein by reason of advances made by it for interest, principal, or other payments guaran-

teed by it or for taxes or other expenses; to use such consents as are required, of persons in interest; to accept such guaranteed mortgage investments in payment for properties or mortgages upon such terms as he may deem proper and to facilitate the exchange of guaranteed mortgage investments among holders for the purpose of effecting such cancellation; to compromise, compound, and settle debts of the corporation by the surrender or transfer of mortgages or certificates, or properties or equities or interests therein held by it in its own right; to, with the consent of all the persons in interest or, with the consent of two-thirds of the persons in interest and with the express approval of the court given upon such notice as the court may prescribe, borrow moneys for the protection, rehabilitation, repair, maintenance, payment of taxes, and other charges or expenses arising out of holding or management of any properties owned, mortgaged, or controlled by virtue of agreements or otherwise and charge the same against such properties or mortgages as a lien thereon prior to the rights of the holders of the guaranteed mortgage investments affecting the same, or in like manner to borrow moneys for such purpose affecting a number or group or properties or mortgages; to borrow moneys, with the express approval of the court given upon such notice as the court may prescribe for any necessary general expense of administration and issue such trustees' or receivers' certificates or other obligations as the court may direct; to secure the repayment of the certificates or other obligations of the commissioner by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal, or mixed of such corporation or of the trusts which may come to his possession or be in his control; and to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof, and the commissioners shall be under no obligation personally or in his official capacity as Commissioner of Banking and Insurance to repay any loan made pursuant to this provision; to administer the properties, rights, credits, and interests which may come to his possession as one trust irrespective of the terms of any instruments made by said corporation in the conduct of its business, keeping proper books of account from which, in the event of ultimate liquidation, the rights of the interested parties may be determined, charging against the separate interests of the parties such proportion of the cost of the general administration, including the repayment of any indebtedness incurred by the commissioner, as the court may, upon such notice as it may prescribe, determine just and equitable; to, in all cases in which he is satisfied from the books and records of the company or from any other evidence as to the ownership of guaranteed mortgage investments, without requiring the filing of proofs of claim, remit and pay so much of the net available collected interest, principal, or proceeds of sales, as he may deem prudent or as the court may direct, after deducting therefrom reasonable amounts to cover costs and expenses of collection, foreclosure, sale, or other corporate

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functions performed under this act, and after reserving so much as he may deem necessary or proper to meet expenses or charges or taxes accrued or accruing against specific properties or mortgages, and for service in the collection thereof, and for general expenses of administration, including, in his or the court's discretion, moneys on hand at the time of taking possession of such company available for and awaiting distribution to persons entitled thereto; to permit outstanding checks or accepted drafts of such corporation representing such payments theretofore made, or other proper payments in the course of business of the corporation to be honored and charged against funds of the corporation on hand; to exercise such further powers and duties as the court may determine.

4. The Court of Chancery shall have power to remove the commissioner and appoint another trustee or trustees and, except as from time to time the court may otherwise order, the substituted trustee or trustees shall have the powers and authority and be charged with all the duties which at the time of his or their appointment had been conferred upon the commissioner, and thereafter the said court may confer upon such substituted trustee or trustees any power or authority which it is permitted by the terms of this act to confer upon the Commissioner of Banking and Insurance.

5. Title to the assets and property, rights, and credits of said corporation and of any such trust shall remain in the corporation or as at the time of the filing of the petition, unless the court shall otherwise order, but the court may, at any time, upon such notice as it may prescribe, vest title to the whole or any part of the property, assets, rights, and credits of such corporation, or of any such trust or coming to the possession or control of the commissioner, in the commissioner.

6. Upon the making of the original order all suits, judgments, decrees, levies, and executions against the assets and property, rights, and credits of the corporation or any property of any trust shall be stayed, unless and until otherwise ordered by the court, and the court shall have exclusive jurisdiction to determine all judicial questions, and all controversies arising in the course of or respecting the administration of the assets, property, rights, and credits of the corporation, and all accountings arising therein, and of the rights of all parties interested therein, and all subsidiary and ancillary causes or proceedings, and of all questions affecting any and all trusts or affecting any of the assets, property, rights, and credits of such corporation, or of any property, assets, rights, and credits in the possession of or under the control of the commissioner or of any of the trusts created by or the result of the issuance of any securities by the corporation in the course of its business, or resulting from any conduct of the corporation, and no plenary proceedings shall be instituted either at law or in equity in any other cause than the one in which the administration of the assets and property, rights, and credits of said corporation shall be pending,

affecting any of the matters hereinabove stated, all such questions being drawn into the administration suit, and all such controversies and matters may be presented in such administration proceeding by a petition in such manner as the court may, either by rule or by special order prescribe, by any party interested, including the commissioner, upon such notice as the court may prescribe, and the court may make such declaratory orders and decrees as may be proper, and may, in its discretion, transfer any subsidiary or ancillary cause or proceeding under the transfer of causes act, and may permit such proceedings as the court may determine to be proper in other courts for the purpose of determining any matter with respect to any
526 claim, the judgment or decree in any other cause or proceeding being enforcible only, however, in the administration suit, and the Court of Chancery may at any time issue an injunction restraining the corporation, its officers, directors, stockholders, members, trustees, agents, servants, employees, certificate holders, policyholders, cestuis que trustent, or other persons interested in any trust created by or the result of any instrument issued by the corporation in the conduct of its business or resulting from any conduct of the business of the corporation, bondholders, creditors, absolute or contingent, attorneys, managers, and all other persons from the transaction of its business or a part thereof, or the waste or disposition of its property, and as may be deemed necessary to prevent interference with the commissioner in any proceeding hereunder, or interference with or waste of the assets of such company or of such trust, or the institution or prosecution of any actions or the obtaining of preferences, judgments, attachments, or other liens, or the making of any levy against the company or against its assets or the assets of any such trust or any part thereof, and may grant such other restraint as to it shall seem proper to protect its exclusive jurisdiction.

7. Upon the making of the initial order in such administration suit no bank, trust company, corporation, association, or individual knowing of such order or of the taking possession by the commissioner, or notified as aforesaid of the fact, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred against any of the assets of the corporation or of the trusts except as the commissioner shall deem necessary for the administration of the property and assets, and no lien shall be obtained after the making of such order by suit, judgment, exe-
527 cution, attachment or of any proceedings whatsoever, and all liens so obtained shall be absolutely null and void, and of no effect.

8. The court may, in order to afford opportunity for the rehabilitation, reorganization or readjustment of all or a part of the business, assets or liabilities, of such corporation or of any such trust, permit or direct the commissioner to carry on and conduct, as far as practicable, the business of such corporation, maintain its organization and facilities, and preserve its good will, conserve and administer its business and assets until a plan or plans of rehabilitation,

reorganization or readjustment shall have been adopted, or until an order of liquidation shall have been made as hereinafter provided.

9. The commissioner, or the corporation or any interested party, may at any time apply to the court for an order in such administration suit permitting the corporation to resume control of its property and the conduct of its business, but no such order shall be granted except with the approval of the Commissioner of Banking and Insurance in his official capacity and except after a hearing and a determination by the court upon such notice as it may prescribe to the interested parties that the objects of the suit have been accomplished.

10. The commissioner may appoint, with the approval of the court, conservators and assistants, to aid him in his administration, conservation, rehabilitation or liquidation, if liquidaton be ordered, of any such corporation or of the trusts created by or the result of any instruments issued by such corporation in the course of its business, or resulting from any conduct of the corporation, with such powers and duties as he may, with the approval of the court, fix, and may employ such counsel and procure such expert assist-
528 ance and advice as may be necessary, and may retain such of the officers or employees of such corporation as he may deem necessary, and may require from such conservators and assistants such security for the faithful discharge of their duties as he may deem proper.

11. The commissioner shall have power to fix the compensation of clerks, assistants, and employees, subject to the supervision of the court, and the court shall have power to make allowances to all persons engaged in the administration, including compensation for services rendered by counsel for the company or for reorganization committees or for any party in interest which the court may determine to have aided in the administration of the property and assets, rights and credits of said corporation or of any trust created by any instruments issued by it or resulting from any conduct of the corporation, and shall also have power to direct the payment of the expenses of any such committee or party actually incurred or anticipated, and shall have power to charge such allowances as it may make against such property and assets of such corporation or of the trust or coming under the control of the commissioner as it may deem equitable and just.

12. The court may from time to time, as it may deem proper, necessary, or expedient to effectuate and administer the property and assets, rights and credits of the corporation and the trusts or agencies created by any instrument made by the corporation or by law, confer upon the corporation the power to, or direct the corporation to, perform any act or acts of a fiduciary nature or otherwise as may be necessary or appropriate in the administration and execution of any trust or agency which may affect any property or mortgage or may confer such power upon the commissioner.

13. The wages or compensation of the clerical and office
529 force, and other employees, of such corporation, due for services rendered within two months prior to the making of the initial order in any administration suit, not exceeding three hundred dollars ($300.00) in any individual case, shall be preferred, and may be paid, in the discretion of the commissioner, at any time after the making of the order.

14. The court shall have power by general rule or by special order to provide for such notice of any proceedings in any suit under this act as shall be reasonable, considering the character of the proceedings and the number of persons who may be interested, and such notice shall be sufficient for all purposes, and may consist of notice to representatives of a class, and may be given by mail, and no failure of any person in interest to receive notice shall affect the validity of any proceedings or order, or action taken under this act, and the court generally shall have the power to make such orders and decrees as may be necessary or appropriate to effectuate the purposes of this act, and may exercise in the course of the proceedings all of its inherent jurisdiction, and all of the power and authority conferred upon it by any other statute of this State.

15. Any holder of a part or share of, or a participation certificate in, a guaranteed mortgage investment of any of such corporation, shall have the right to obtain from the commissioner upon reasonable and timely application made in good faith for the protection of his interest and upon paying or tendering payment of the reasonable expense thereof as determined by the commissioner, a list of the names and addresses and amount of the respective holdings of the other persons holding the other shares or parts, or participation certificates, in the same mortgage investment, or be permitted to take off such list from the books or records of the company. Any such person may be required to establish his identity and right to
530 such list and may be required to produce the certificate or other instrument evidencing his ownership of a part or share of such investment. The court may make a general order that no such lists shall be offered for sale or be generally circulated or be given general publicity, and a copy of such order shall be delivered to the person obtaining such a list at the time of delivery, and a violation of such order shall be deemed to be a contempt of the Court of Chancery and shall be punishable as such by that court.

16. The commissioner in his official capacity or as trustee, or any substituted trustee or trustees of such corporation, or persons having a material interest in the guaranteed mortgage investments of such corporation, may initiate one or more plan or plans for the general or partial rehabilitation, reorganization, readjustment, or liquidation of all or a part or parts of the business, assets, and liabilities of the corporation or of the trusts. Such plan or plans, or having the written consent of not less than two-thirds in interest of the persons interested therein, and, in the case of a general plan of rehabilita-

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tion or reorganization or adjustment, of two-thirds of the stockholders of the corporation, with the approval of the court, after reasonable notice, may be adopted and carried into effect, and all persons affected not consenting thereto, shall, nevertheless, be bound thereby; provided, the court may order provision to be made for setting aside for the benefit of such persons such pro rata share of assets and charge thereon such pro rate share of liabilities, or the equivalent thereof, as they may be properly and equitably entitled to; provided, however, that the court shall not be required so to do if it be equitable and just that said dissenting person be bound by the provision of such plan to accept such provision as made for him by said plan. Such plan or plans may contain such covenants, agreements, or provisions as may be desired, including pro-
531 vision for the resumption of all or a part of the business of the corporation and a return to it of all or a part of its assets, or the transfer thereof to one or more other corporations, or the merger or consolidation of the corporation with one or more other corporations, the reduction or readjustment of the indebtedness or obligations or liabilities of the corporation, the issuance of preferred, special, or other capital stock or certificates of interest representing interests in all or a portion of the assets, the substitution or exchange of other securities, provision for grouping or classification of assets, or the amalgamation of separate trusts affecting collaterals or securities for any issue or series of bonds or obligations of the corporation.

Any such plan or plans may provide for segregation of and resumption of a part of the business, such as the title business of such corporation, and may provide for the segregation of a part of the assets and the transfer thereof to a corporation issuing modified guaranties in substitution for existing guaranties.

Any such plan or plans may contain any reasonable provisions relating to the securing, collection, payment, amortization, or compromise of or other protection of equities or interests of the corporation in mortgages or properties arising out of advances by the corporation on account of interest, taxes, insurance, foreclosure, costs, expenses of maintenance, repair, and the like.

17. The holders, representing not less than twenty-five per centum (25%) in interest, of guaranteed investments or certificates in any specific mortgage or number or groups of mortgages, whether theretofore grouped or pooled or not, may initiate plans to take over such mortgages or properties on fair and equitable terms, through
532 the formation of a corporation or association in which the holders are members, or otherwise, with the consent of all of them, or with the consent of two-thirds in interest of them and with the approval of the court. Any such plan so adopted shall in like manner as hereinbefore provided be binding upon all holders in interest.

18. No such plan of reorganization or rehabilitation shall be effective if it shall involve the formation, or the continuance, of a corporation, which under the laws of this State would be subject to the supervision of the Commissioner of Banking and Insurance, unless approved by the Commissioner of Banking and Insurance in his official capacity.

19. At any time the commissioner in his official capacity or as trustee may, or any party in interest may, provided no general plan of rehabilitation, reorganization, readjustment or liquidation shall have been approved, apply in the administration suit for an order of liquidation, upon such notice as may be fixed by the court. The court may make such order, provided it is satisfied that further effort to rehabilitate said corporation would be futile and that the interests of those interested so require, and the commissioner or substitute trustee or trustees shall thereupon proceed to liquidate such corporation, and the date of such order shall be the date as of which claims shall be determined as respects their rank, amounts and validity, and the like, for the purposes of liquidation, and thereupon such proceedings shall be continued as liquidation proceedings. The liquidation of such corporation shall thenceforth proceed and be conducted under and in accordance with the provisions of "An act concerning corporations." (Revision of 1896, approved April twenty-first, one thousand eight hundred and ninety-six, and
533 acts suplemental thereto, provided, however, that the Court of Chancery may make also such order or decrees as it is authorized to make under its inherent jurisdiction and any trusts involved shall be liquidated in such manner as the Court of Chancery shall determine. Nothing herein shall prevent or restrict the effectuation of any plan of general or partial liquidation adopted under this act.

The court may, however, at any time before liquidation has been effected, in a proper case vacate such order, whereupon the proceedings shall continue as if such order had not been made.

20. The commissioner may apply in the administration suit at any time after an order of liquidation has been made, for an order dissolving the corporation.

21. For the purpose of effectuating any purpose of this act the commissioner shall have power in his official capacity to make and alter such rules and regulations as to him shall seem proper.

22. The orders and regulations made by the Commissioner of Banking and Insurance in his official capacity under the provisions of any law of this State, and the orders and decrees of the court made in the proceedings, and the acts of the commissioner thereunder or of any substituted trustee or trustees, shall be binding upon and effectual as to all persons who may be affected thereby in any manner, including trustees or depositaries of mortgages against which or under which interests in mortgages are issued and any such trustees or depositaries shall be relieved of responsibility for any act

or omission in compliance with orders or regulations, decrees or orders made under this act.

23. The commissioner, his deputies, assistants, agents, and conservators, or any trustee or substituted trustee, shall not be liable or responsible for any act taken or omitted in good faith, or
534 any error or omission of judgment, or mistaken exercise of any discretionary power.

24. Any person acting as executor, administrator, trustee or in any other fiduciary capacity, and all banks, savings banks, trust companies, insurance companies, and other corporations, within this State, and all officials of this State, the several counties, municipalities, and school districts therein, and of any public commission or body created under the laws of this State, shall, with respect to any mortgages or interests in mortgages held by them, have power to take any action or give any consent and enter into any agreement or plan authorized by the provisions of this act.

25. Every mortgage guaranty corporation shall have and possess, and may exercise, all of the powers, including powers conferred upon corporations under the act entitled "An act concerning corporations" (Revision of 1896), approved April twenty-first, one thousand eight hundred and ninety-six, and the supplements and amendments thereto, including power to issue preferred or special stock, so far as consistent with and incident to or furthering the exercise of any of the powers conferred by this act or the attainment of any of the purposes of this act.

26. This act shall apply to every mortgage guaranty corporation of which the Commissioner of Banking and Insurance has heretofore taken possession and of which he is in possession at the time of the enactment of this act, so far as the same may be applicable thereto. All of the provisions herein respecting the formulation and adoption of a plan or plans for the rehabilitation, reorganization, readjustment, or liquidation of any such corporation, shall apply not only to such corporation in the possession of the commissioner, but,
535 also, so far as applicable, to any such corporation which is in the hands of receivers or otherwise in the custody of the law.

27. This act is enacted under the police power of the Legislature with respect to the corporations affected, such corporations being deemed by the Legislature to conduct a business charged with a public interest, and under the power of the Legislature to alter or repeal charters of corporations and to change corporate powers, and any other power vested in the Legislature under the Constitution, and the Legislature determines that the emergency recited in chapter seventy-one of the laws of one thousand nine hundred and thirty-three, approved March sixteenth, one thousand nine hundred and thirty-three, continues to exist and may continue to exist for some time unknown to the Legislature, and any provision, if there be any, which can be sustained as valid only during the existence of the emergency shall continue in effect until such emergency shall

cease. All other provisions of this act shall continue to be effective until otherwise provided by the Legislature.

28. Should one or more sections, subsections, or portions, even if included in a single sentence or phrase, of this act for any reason be considered by any court and be adjudged unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

29. This act shall be liberally construed for the effectuation of its purposes in all courts, in all places, and by all public officers.

30. The word "person" wherever used in this act shall include natural persons, partnerships, fiduciaries, corporations and associations.

31. This act may be cited as the "Mortgage Guaranty Corporations Rehabilitation Act."

536 32. All acts or parts of acts inconsistent herewith are repealed, provided, however, that nothing herein shall repeal section fifty-six B of the act entitled "An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State", approved April third, one thousand nine hundred and two, or section fifty-six (a) of said act, except insofar as the same shall be inconsistent with this act, but then only as respects proceedings taken under this act. Nothing herein shall repeal chapter seventy-one of the laws of one thousand nine hundred and thirty-three.

33. This act shall take effect immediately.

Approved January 9, 1934.

Chapter 36, Laws of 1934

An Act to amend an act entitled "An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State", approved April third, one thousand nine hundred and two.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section seventy of the act to which this act is amendatory be and the same is hereby amended to read as follows:

70. Annual statements. Every insurance company transacting business in this State shall annually, on or before the first day of March, file in the Department of Banking and Insurance a statement, subscribed and sworn to by its president and secretary, or, in their absence, by two of its principal officers, showing its financial condition at the close of business on the thirty-first day of December of the year last preceding, and its business for that year, which statement shall be in such form and contain such matters as the Commis-

537 sioner of Banking and Insurance shall prescribe; said Commissioner may also address any inquiries to any such company or its officers in relation to its condition or affairs, or any matter con-

nected with its transactions, and it shall be the duty of the officer of such company to promptly reply in writing to all such inquiries; for good cause shown the Commissioner may extend the time within which any such statement may be filed; the annual statement of a company of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its American business.

In addition to any other matter which may be required by law or pursuant to law by the Commissioner of Banking and Insurance to be stated therein every annual report of every life insurance company doing business in this State shall contain an accurate, concise, and complete statement of the following matters, to wit: (1) All the real property held by the company, the actual cost, the value at which it is carried on the company's books, the market value, the amounts expended during the year for repairs and improvements, the gross and net income, and if any portion thereof be occupied by the company, the rental value thereof, and all purchases and sales together with the consideration therefor made since the last annual statement. (2) The amount of existing loans upon the security of real property, stating the amount loaned upon property in each State and foreign country. (3) The outstanding sums loaned by the company other than loans upon the security of real property above mentioned and other than loans upon policies, the maturity and rate of interest of such loans, the securities held therefor, and all substitutions of securities during the past calendar year in connection therewith, and the same particulars with reference to any loans discharged since the last statement. (4) All other property owned by the company or in which it has any interest (including all securities, whether or not recognized by the law as proper
538 investments), the date of acquisition, from whom acquired, the actual cost, the value at which the property is carried upon the books, the market value, the interest or dividends received thereon during the year; also all purchases and sales of property other than real estate made since the last annual statement, with particulars as to dates, names of purchasers and sellers, and the consideration; and also the income received and the outlays made in connection with all such property. (5) All commissions paid on loans or on purchases or sales of any property during the year where the same amounted to more than five thousand dollars to any person, firm or corporation, and a statement of all payments for legal expenses, giving particulars as to amounts, names and addresses of payees, and occasion of expense. (6) All moneys expended in connection with any matter pending before any legislative body or any officer or department of government, giving particulars as to dates, amounts, names and addresses of payees, the measure or proceeding in connection with which the payment was made, and the interest of the company therein. (7) The names of the officers and directors of the company, the proceedings at the last annual elec-

tion, giving the names of candidates and the number of votes cast for each and whether in person, by proxy, or by mail. (8) The salary, compensation, and emoluments received by officers or directors, without exception, and that received by any person, firm or corporation, where the same amounts to more than five thousand dollars, excepting bona fide commissions paid to or retained by agents, with particulars as to dates, amounts, payees and the authority by which the payment was made. (9) The largest balances carried in each bank or trust company during each month of the year. (10) All death claims resisted or compromised during the year, with particulars as to sums insured, sums paid and
539 reasons assigned for resisting or compromising the same in each case. (11) A complete statement of the profits and losses upon the business transacted during the year and the sources of such gains and losses. A company, issuing both participating and nonparticipating policies, shall make a separate statement of profits and losses, margins and expenses, as aforesaid, with reference to each of said kinds of business, and also showing the manner in which any general outlays of the company have been apportioned to each of such kinds of business. (12) The rates of annual dividends declared during the year for all plans of insurance for which policies were issued during the last five years and during each fifth year of the preceding seventy years and for ages at entry, twenty-five, thirty-five, forty-five, and fifty-five, or as near as may be, and the precise method by which such dividends have been calculated. (13) A statement of any and all reserve or surplus funds held by the company and for what purpose they are claimed, respectively, to be held.

The rendition of the statement or statements required under subdivision eleven may be postponed until not later than the thirtieth day of June following the year for which required, in all cases where a company shall state that it is unable to comply with the requirements of said subdivision satisfactorily at the time of making its statement of the other details required herein.

Approved March 14, 1934.

Chapter 136, Laws of 1934

A Supplement to an act entitled "An act relating to mortgage guaranty corporations, title and mortgage guaranty corporations and insurance corporations engaged in the business of insurance
540 against loss by reason of the nonpayment of principal and interest on bonds and mortgages, providing for the conservation, rehabilitation, reorganization or liquidation of such corporations, and relating to trusts and agencies created by or the result of instruments issued by said corporations, and conferring powers upon the Commissioner of Banking and Insurance and the Court of Chancery with respect thereto, and for the protection of holders of guaranteed mortgage investments", approved January ninth, one thousand nine hundred and thirty-four.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. All deposits made by the Commissioner of Banking and Insurance acting, or by any trustee or trustees acting, under the authority of the act to which this act is a supplement, or under the authority of the Court of Chancery pursuant to said act, in State banks, savings banks or trust companies, in the event of the suspension or insolvency of the depository shall be preferred before all other deposits except such deposits as may be made by the Commissioner of Banking and Insurance which are given like preference by any statute of this State, with respect to which they shall have equal priority.

2. This act shall take effect immediately.

Approved May 2, 1934.

541 Offered in to evidence by Mr. Saul Memser.

Exhibit C to deposition

Nov. 19, 1934. Meyer Q. Kessel, Notary Public of N. J.
T. A. McNicholas.

SCHEDULE B

Special Meeting of the Board of Directors, May 28, 1932

The Special Meeting of the Directors was held at this Office on Saturday, May 28th, 1932, at 10:30 a. m., the following Directors being present: S. C. Hoagland, V. E. H. Hoagland, Henry G. Pilch, C. F. Hoagland, I. P. Hoagland.

President Hoagland presided.

The Minutes of the special meeting of May 20th, 1932, were read and approved.

In the absence of the Secretary, Robert A. Fraser, Assistant Secretary, was appointed to take the minutes.

On Motion duly seconded, the following Resolutions were adopted:

"Resolved that

"Whereas, this Company has entered into two reinsurance agreements with Commercial Casualty Insurance Company, each bearing date the 10th day of May 1932, one of which contracts provides for the reinsurance of certain outstanding policy liability of this Company within the States of California, Oregon, and Washington, and for the assumption of which liability by Commercial Casualty Insurance Company this Company agrees to pay to Commercial Casualty Insurance Company the total unearned premium reserve on said liability, as provided by the Statutes of the State of New Jersey,
542 less a commission or allowance by Commercial Casualty Insurance Company to this Company of forty per cent (40%) thereof, and the other of which contracts provides for the

reinsurance of certain outstanding policy liability of this Company in all the States of the United States except the States of California, Oregon, and Washington, and for the assumption of which liability by Commercial Casualty Insurance Company this Company agrees to pay to Commercial Casualty Insurance Company the total unearned premium reserve on said liability, as provided by the Statutes of the State of New Jersey, less a commission or allowance by Commercial Casualty Insurance Company to this Company of thirty-five percent (35%) thereof; and

"Whereas, there has been delivered to Commercial Casualty Insurance Company pursuant to paragraph (a) of Article IV of the second above-mentioned contract Bonds of various political subdivisions of the State of New Jersey valued for the purposes of said agreement at $473,000, as in paragraph (a) of Article IV of said contract provided; and

"Whereas, the Vice President and Assistant Secretary of this Company, pursuant to the provisions of the aforementioned contracts have executed and delivered a general assignment of mortgages as provided for in the terms of said contracts; and

"Whereas, it is necessary that individual assignments of each of the mortgages chosen by Commercial Casualty Insurance Company pursuant to the provisions of the contracts be hereafter executed;

"Now, Therefore, Be it Resolved, That the President and/or Vice President and Secretary or Assistant Secretary of this Company be and they are hereby specifically authorized to execute separate assignments of each and every mortgage which may be selected by Commercial Casualty Insurance Company from time to time in conformity with provisions of Article IV of said contracts, and to make, execute, and deliver adequate assignments or warants for transfer in whatever form required of any of the bonds heretofore
543 deliver pursuant to paragraph (a) and (b) of Article IV of said second above-mentioned contract, and to do any and all other acts and things necessary to carry fully into effect the provisions of said contracts hereinabove mentioned, further ratifying and confirming any acts which such officers may have heretofore done in this connection for the purpose of carrying the terms of said contract into effect.

"This Board hereby approves and ratifies said reinsurance contracts or agreements which have been read and submitted to this meeting.

"Be it Further Resolved, that

"Whereas, because of present-day conditions affecting the security market and the business of casualty insurance in general and of the further fact that this Company has succeeded in effectuating a contract of reinsurance covering its policy liability in most of the lines heretofore written; and

"Whereas, under such condition it is inadvisable, for this Company to further continue business;

"Now, Therefore, Be it Resolved that the Commissioner of Banking and Insurance of the State of New Jersey be requested to take charge of the affairs of this Company pursuant to the provisions of the statutes of New Jersey in such case made and provided."

There being no further business, on motion, the Meeting adjourned.

R. A. FRASER,
Assistant Secretary.

MAY 28, 1932.

I hereby certify that the foregoing is a true copy of the Minutes of the Special Meeting of the Directors of the New Jersey Fidelity & Plate Glass Insurance Company held this day.

R. A. FRASER,
Assistant Secretary.

MAY 28, 1932.

Filed Nov. 23, 1934. Paul V. Lang, Clerk.

544 [Clerk's certificate to foregoing transcript omitted in printing.]

[Copy]

547 In Supreme Court of Florida

June Term, A. D. 1935

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE OF the State of New Jersey, and The London Operating Company, a Florida Corporation, appellant

vs.

W. V. KNOTT, AS STATE TREASURER AND INSURANCE COMMISSIONER OF the State of Florida, and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized and existing under the insurance laws of the State of New Jersey, appellees

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THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, appellant

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, and W. V. Knott, as Treasurer of the State of Florida, appellees

Leon County (Two cases consolidated)

Appeals from the Circuit Court for Leon County, J. B. Johnson, Judge.

Herbert U. Feibelman, for Appellant; Waller & Pepper, Evans, Mershom & Sawyer, Roland W. Granat, Sutton, Tillman & Reeves,

Mabry, Reaves, Carlton & White; Giles J. Patterson, John W. Holland, U. S. Attorney, and Wm. A. Paisley, Assistant U. S. Attorney, for Appellees.

Opinion

Filed June 24, 1935

DAVIS, *J.:*

548 This cause originated in the Circuit Court through the filing of a bill of complaint to prevent certain securities of an alleged insolvent surety company deposited with the State Treasurer under Sections 6302–6303 C. G. L., 4339–4340 R. G. S., from being exhausted and depleted to satisfy the judgments of only a few of the insolvent creditors at the expense of the many.

While the original cause was pending indisposed of in the Court below, the Florida Legislature enacted Chapter 16248, Acts 1933, Laws of Florida (Senate Bill No. 288, approved May 10, 1933).

By that act, Section 6303 C. G. L., 4340 R. G. S., was so amended as to provide that in cases of the insolvency of any surety company having securities on deposit with the State Treasurer as provided by Section 6302 C. G. L., 4339, R. G. S., and acts amendatory thereof, a court of chancery at the seat of government in Florida, upon a bill of complaint filed by any party in interest, should take charge of the securities so on deposit with the State Treasurer, together with any other asset of such surety company which may be marshaled in the State of Florida, for the purpose of directing a sale thereof and making a distribution of the sale of said securities proportionally (among all Florida creditors) who might make proof of their claims against the insolvent surety company.

The enactment of the statute was followed by the institution of a suit under it filed by the London Operating Company as complainant and naming the New Jersey Fidelity & Plate Glass Insurance Company and W. V. Knott, State Treasurer, as defendants. This bill prayed the appointment of a receiver to take charge of the $75,000.00 worth of securities on deposit with the State Treasurer by the New Jersey Fidelity & Plate Glass Company and that the names of Florida creditors having claims against the same be ascertained and appropriate distribution made to them of such assets as their interests might appear. Subsequently D. M. Lowry was
549 appointed receiver in the cause, and on May 25, 1933, pursuant to a motion to that effect filed by William H. Kelly, Commissioner of banking and insurance of the State of New Jersey, the complainant in the suit originally begun by him on December 19, 1932, prior to the enactment of the 1933 liquidation statute the first instituted suit of William H. Kelly, as Commissioner of banking and insurance of the State of New Jersey versus W. V. Knott, State Treasurer, and New Jersey Fidelity & Plate Glass Insurance Company was consolidated with the suit instituted on May 16, 1933, by the London Operating Company, as complainant, under the 1933 act.

On October 27, 1934, the Chancellor entered an order recognizing and directing the payment of the $28,476.28 in claims of Florida creditors that the Court adjudged to be payable out of the proceeds of the securities deposited with the State Treasurer by the New Jersey Fidelity & Plate Glass Insurance Company in accordance with Section 4339 R. G. S., supra. The claims thus allowed represented claims of Florida creditors founded on surety bonds, but which claims had not been reduced to judgment before the insolvency and liquidation proceedings had been instituted against the surety company at its domicile in the State of New Jersey. By express provision in the court's decree, the question was reserved as to what should be done with the residue of funds remaining in the hands of the Receiver after the payment of the $28,476.28 in claims so expressly allowed. The present appeal is by William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, the original complainant in the court below, who contends in support of his appeal, that the foregoing order of the Circuit Court should be reversed by this Court, because of an alleged superior right exhibited on his part, as domiciliary liquidator of the New Jersey Fidelity & Plate Glass Insurance Company in New Jersey, the State of its domicile, to have and receive from the State Treasurer, free from any and all claims of Florida citi-
550 zens not holding judgments obtained prior to the inauguration of the domiciliary insolvency proceedings, whatever securities may remain out of the original deposit made with the State Treasurer by the New Jersey Fidelity & Plate Glass Insurance Company under Section 6302–6363 C. G. L., 4339–4340 R. G. S.

It appears from the record that New Jersey Fidelity & Plate Glass Insurance Company was a corporation chartered in 1868 under the corporation and insurance laws of the State of New Jersey; that it was taken over for liquidation in the State of its domicile on May 28, 1932; that such taking over was by the Commissioner of Banking and Insurance of the State of New Jersey and was by virtue of the New Jersey statutes and without court action; that the taking over of said company for liquidation in the state of its domicile transpired long prior to the filing in Florida on December 19, 1932, of the New Jersey Liquidator's original suit brought to conserve the company's Florida assets as hereinbefore related; that the Florida suit was filed by appellee William H. Kelly, as domiciliary liquidator, as an undertaking to judicially impound and conserve the securities that the New Jersey Fidelity & Plate Glass Insurance Company had previously placed on deposit with the State Treasurer under Sections 6302–3, C. G. L., supra; that such action was required for the protection of Florida creditors, because of the lack, at the time, of any statutory authority or method for their disposition or distribution except in payment of judgments rendered against said New Jersey Fidelity & Plate Glass Insurance Company.

The laws of New Jersey, as established in the record, show that appellant is a statutory liquidator of the New Jersey Fidelity &

Plate Glass Insurance Company, a New Jersey corporation, who, by virtue of such New Jersey statutes, and upon petition of the company itself filed thereunder, had taken charge of all the assets of the New Jersey company for the benefit of all creditors who had done
551 business with said company, scattered in nearly every state in the Union, including creditors in Florida.

It is accordingly the contention of appellant that in determining the rights of the Florida creditors, whose claims have been ordered paid in full as directed in the Leon County Circuit Court's order of October 27, 1934, herein appealed from, that the Florida Courts must look not only to Sections 6302–6303 C. G. L., 4339–4340 R. G. S., as they existed at the time of the New Jersey corporation's deposit of securities with the State Treasurer in order to entitle it to carry on its Florida business, but to the corporate charter of the New Jersey company, as well as to all statutes and prevailing laws of New Jersey relating to or providing for the company's liquidation, all of which laws it is contended were impliedly acceded to by Florida claimants when they dealt with the New Jersey company, and are therefore to be followed and observed by the Florida courts in determining their creditors' rights against the domiciliary liquidator of the defunct New Jersey corporation.[1]

Since a decision of the controversy now before this Court must depend largely if not entirely upon the proper judicial construction required to be placed upon the Florida statutes governing the transaction of business of surety companies in the State of Florida, as they existed at the time of the insolvency of the New Jersey Fidelity & Plate Glass Insurance Company, it is appropriate that the history of such Florida statutes, as appear to be applicable to this case, be herein set forth in order that the statutory background of
552 the present controversy may be more clearly understood by the bench and bar to whose perusal and attention this opinion may come.

In 1885 Chapter 3596, Acts of Florida, was enacted. The requirement of Section 4 of this Chapter was that the surety company be possessed of $500,000.00 capital or assets in specified securities, of which at least $100,000.00 shall be deposited with insurance commissioners, auditor, comptroller, or chief financial officer of any state of the United States or of the state under whose laws such company is incorporated, for the benefit "of all obligees of such company."

Section 4 of Chapter 3596 appears in the Revised General Statutes of Florida of 1892 as Section 2230 thereof, but does not appear in the General Statutes of 1906, nor in the Revised General Statutes of 1920, nor in the Compiled General Laws of 1927, so that it appears that such section was repealed either by or about the time of the enactment of Chapter 4671, Acts of 1899.

[1] Cited in support of this contention are: Relf v. Rundle, 103 U. S. 222, 26 L. Ed. 337; Mumma v. The Potomac Co., 8 Pet. (U. S.) 281, 8 L. Ed. 945; Bank of Augusta v. Earle, 13 Pet. (U. S.) 519, 10 L. Ed. 274.

Section 2 of Chapter 4671, Acts of 1899, as amended by Section 3 of Chapter 7867, Acts of 1919, and Sections 4 of Chapter 12321, Acts of 1927, appears in the Compiled General Laws of 1927 as Section 6302 thereof, which is as follows:

"Companies herein described, chartered by this State, or other States or foreign Governments, now doing business in this State, or hereafter doing business in this State, which offer or undertake to become surety upon any bond, or surety contract, before being accepted as surety thereon, shall be required to deposit with the Treasurer of this State bonds of the United States, or bonds of any State of the United States, and which amount according to their market value to seventy-five thousand dollars, which bonds shall be receipted for by the State Treasurer and held or deposited by him. And whenever such company ceases to do business in this State, and has settled up all claims against it, as hereinafter
553 provided, and has been released from all the bonds upon which they have been taken as sureties said bonds shall be delivered up to the proper party on presentation of the Treasurer's receipt for said bonds. While said bonds are so deposited with the Treasurer, the owner of the same shall be entitled to collect the interest on the same. For the bonds so deposited, the faith of the state is pledged that they shall be returned to the party or parties entitled to receive the same."

Section 3 of said Chapter 4671, as amended by Section 5 of Chapter 12321, Acts of 1927, appears in the Compiled General Laws of 1927 as Section 6303 thereof, which is as follows:

"Whenever final judgment has been rendered against any surety company on a fidelity or surety bond, said surety shall pay the same within thirty days. Upon notice of failure to pay said amount within said time, the State Treasurer shall retain said bonds, or so much thereof as may be necessary to cover said judgment and costs, subject to the order of the court trying any suit that may be brought upon such bond."

Section 6303 was amended by Chapter 16248, Acts of 1933, by the addition of a proviso prescribing the disposition of Florida assets of such surety companies and the securities deposited with the State Treasurer by them in accordance with the requirements of Section 6302 C. G. L. 1927, in the event of insolvency or liquidation of said companies.

Chapter 16247, Acts of 1933, provided for the giving of notice of the appointment of a receiver under Chapter 16248; and provided a limitation of time within which to file claims against such insurance, indemnity, or surety companies in receivership.

554 Section 1 of Chapter 16248 is set forth in the 1934 supplement to the Compiled General Laws of 1927 as Section 6303 thereof, and Sections 1, 2, and 3 of Chapter 16247 are found in said Supplement as Sections 6303 (1), 6303 (2), and 6303 (3) thereof, respectively.

So the primary questions to be decided in this case may be summarized as follows:

Whether or not deposits of securities made by a surety company with the Florida State Treasurer under the provision of Section 6302 C. G. L. 4339 R. G. S., were required to be made and were made (1) for the sole benefit of judgment creditors only, when holding judgments obtained prior to the insolvency of the depositing surety company, and then only if predicated on claims arising out of surety bonds or surety contracts executed for the benefit of Florida obligees, as contended by appellant, William H. Kelly, as Commissioner of banking and insurance of the State of New Jersey; (2) or for the sole benefit of Florida obligees in Florida surety bonds and surety contracts, whether their claims be reduced to judgment or not, as contended for by some of the appellees; or (3) as a special deposit by way of pledged security for the payment of all "claims" against a defaulting or insolvent surety company, whether such "claims" arise out of surety bonds or surety contracts, or not, but with priority therein in favor of surety bond and surety contract holders, to the extent of creating a preferred claim in favor of first payment of judgment creditors obtaining judgments on Florida surety bonds and surety contracts, followed by a secondary preference in favor of obligees on Florida surety bonds and surety contracts entitling the latter to preferential payment in advance of other claims of a subordinate order, such as claims of Florida creditors in general.

We recognize, of course, the general rule that a state statute discriminating, or undertaking to discriminate, against nonresident creditors of a foreign corporation permitted to transact business in the State of Florida, would be unavailing for such purpose, in view of those provisions of the Federal Constitution guaran-
555 teeing to citizens of each state the privileges and immunities of the citizens of the several states. Sully v. American Nat. Bank, 178 U. S. 289, 20 Sup. Ct. Rep. 935, 44 L. Ed. 1072; Blake v. McClung, 172 U. S. 239, 19 Sup. Ct. Rep. 165, 43 L. Ed. 432; 176 U. S. 59, 20 Sup. Ct. Rep. 307, 44 L. Ed. 371; Maynard v. Granite State Provident Ass'n, 92 Fed. 435; Clark v. Williard, 292 U. S. 112, 54 Sup. Ct. Rep. 615, — L. Ed. —.

But there is nothing in the Constitution of the United States or in the Constitution of Florida that prohibits the State of Florida from requiring a foreign corporate surety company to make a special deposit with the State Treasurer to be held in trust for the benefit and security of Florida resident creditors, regardless of class or distinction between the same. Indeed, it seems to be the prevailing practice of every state in the Union wherein foreign corporations are permitted to carry on an insurance company or corporate surety business to definitely impose such a requirement as a condition precedent to their right to lawfully do business in states other than the state of their domicile, and such requirement has been uniformly

upheld as a valid one. "It would . . . be a strange defect in the legislative power if . . . a state could not frame laws which would enable her to subject lands (assets) of a corporation whose charter had expired to the debts which it owed her citizens." McCoon v. Scales, 9 Wall. (U. S.) 23, 19 L. Ed. 545 (text 548). See also: Paul v. Virginia, 8 Wall. (U. S.) 168, 19 L. Ed. 357.

What then, was the purpose of the required statutory deposit of securities by New Jersey Fidelity Plate Glass Insurance Company, brought in controversy in this case, and to what extent does such deposit constitute a trust fund for the benefit of Florida creditors in case of the insolvency of such company, to the exclusion of all other claims?

We think that the correct answer to the foregoing question is to be found in the necessary meanings and intendments comprehended within the scope of the language of the statute under which the deposits of securities were required to be made. Section 4339 R. G. S., 6302 C. G. L.

556 The Florida statute plainly requires that every such depositing surety company ceasing to do business in Florida, whether by voluntary withdrawal of its business from the state, or because of insolvency, must first settle up "all claims against it, in addition to becoming discharged or released from outstanding surety bonds and surety contracts, in order to become entitled to demand and reclaim its deposited securities as having been discharged from the statutory trust created by the act of deposit in accordance with the Florida statute.

Such construction of the statute was indicated by this Court in an opinion filed in 1932 long prior to the enactment of Chapter 16248, Acts of 1933, which latter statute we hold to be merely declaratory of what was already the Florida law subject to which the deposited securities were put up to be held, subjected or distributed, as occasion might arise. See: State ex rel Union Indemnity Co. v. Knott, State Treasurer, 105 Fla. 569, 143 Sou. Rep. 221.[2] It was in effect followed in both the main opinion and in the concurring opinion of Mr. Justice Brown in the subsequently decided case of Board of Public Instruction of Dade County v. Knott, State Treasurer, decided the same year and reported in 106 Fla. 869, 143 Sou. Rep. 735. Nor was such construction of the statute ignored or over-ruled in the later case of State ex rel Vetter v. Knott, State Treasurer, 114 Fla. 95, 153 Sou. Rep. 606, wherein this Court was asked but refused to declare that the statute created a special trust for the benefit of judgment creditors which should be given effect by allowing judgment creditors to subject it to levi as (levies?)

[2] This case involved the rights of an assignee to withdraw deposited securities after a surety company had ceased to do business in the state but as to which an unsettled claim was pending. The holding was that the assignee's ownership and right of possession to the securities on deposit with the State Treasurer was subject to the pending unsettled and unliquidated claim being asserted against the depositing surety company, although it had not been reduced to judgment at the time.

under execution at the instance of the judgment creditors, regardless of the insolvency of the surety company, its pending
557 liquidation as an insolvent foreign corporation under the laws of a sister state, or the enactment of Chapter 16248, Acts of 1933, setting forth a specific method of dealing with and disposing of such trust deposit for the benefit of Florida claimants.[3]

While the deposited securities of a solvent and going surety concern still transacting business in Florida do constitute (as was held in the Vetter case, supra) a special security for the payment of judgments rendered against such surety companies in this state (Section 6303 C. G. L., 4340 R. G. S.), the fund represented by the deposited securities is also in the nature of a fund held in trust for the benefit of domestic creditors of the depositing surety company, as a condition precedent to its right to transact a surety business in this State. This is so because the statute under which the deposit of such securities is required to be made, specifically conditions the right of the depositing company to withdraw the securities so deposited, not upon the payment or release of judgments on surety bond or surety contract claims alone, but upon the settlement of "all claims against it."

The phrase "as hereinafter provided," as used in amended Section 4339 R. G. S., supra, is only intelligible and capable of being given meaning when it is construed as if it read, "as herein provided." This apparently superfluous phrase should not be so construed as to destroy the obvious meaning, intent, and purpose of the Legislative requirement as it otherwise appears in the statute, both from the words and context of the Section. See: State v.
558 City of Miami, 100 Fla. 1388, 131 Sou. Rep. 143, where superfluous and meaningless language in a constitutional amendment was rejected under this rule.

The deposited securities of New Jersey Fidelity and Plate Glass Insurance Company having been put up with the State Treasurer as a trust fund to be held by him for the protection and benefit of all Florida claimants entitled to seek satisfaction thereout, regardless of the continued solvency of the depositing corporation, or its voluntary cessation of business in the State of Florida, it follows that it was entirely competent for the Legislature of 1933 to enact Chapter 16248, Laws of Florida (Senate Bill 288), setting up a special chancery proceeding by which the trust could be enforced and discharged in the event of the depositor's insolvency—a contingency not theretofore provided for by way of any judicial method of distribution except under the general equitable powers of courts of equity to protect and enforce trusts.

[3] The holding of the decision was not that the deposited securities were not a trust fund, but that in order for a judgment creditor to subject it to satisfaction of his judgment by impressing the specific lien of his judgment thereon to the preference of other claimants entitled to participate in such fund, that the statutory method of procedure for such subjection to the execution and judgment lien would have to be followed prior to insolvency.

It follows also that it was competent for the Legislature in and by said Act to adopt and provide for a method of investigation of claims as well as for distributing the trust fund, according to the object of its creation as already heretofore understood and declared by the laws of Florida pertaining to the rights of the depositing surety company reserved therein as against the terms and conditions of the stated trust, and that no vested or constitutional rights of appellant, Willliam H. Kelly, as domiciliary receiver or liquidator of the surety company here involved, have been violated by such statute in its provisions, which simply direct a course of distribution assented to by the surety company when it made its deposit under, and in accordance with, the requirements of the state law of Florida under which it sought and enjoyed its right to do business as a surety company in the State of Florida. See: People v. Granite State Provident Ass'n., 161 N. Y. 492, 55 N. E. Rep. 1053, affirming 41 App. Div. 257, 58 N. Y. S. 510; Maynard v. Granite State Provident Ass'n. (CCA 6th U. S. Circuit), 92 Fed. 435;
559 Phillips v. Perue, 111 Tex. 112, 229 S. W. Rep. 849; Lewis v. American Savings & Loan Ass'n., 98 Wis. 203, 73 N. W. Rep. 793, 39 L. R. A. 559; Clark v. Williard (second appeal), — U. S. —, 55 Sup. Ct. Rep. 356, — L. E. — (Decided February 4, 1935); 17 Fletcher Cyclopedia of Corporations, page 703.

The 1933 legislation clearly does not undertake to provide for any judicial seizure and distribution of the general assets of the New Jersey Fidelity and Plate Glass Insurance Company owned or found in Florida to Florida creditors in preference to other creditors generally. It is therefore not violative of Section 2, Article IV of the U. S. Constitution as interpreted and construed in the case of Blake v. McClung, 172 U. S. 239, 19 Sup. Ct. Rep. 165, 43 L. Ed. 432, altho it may, and possibly does authorize any general assets of such insolvent corporation found in Florida to be brought within judicial control and conserved by the designated Florida court, until appropriate disposition thereof can be made as provided by applicable provisions of general law controlling the same.

Neither does Section 6302 C. G. L. 4339 R. G. S., Section 6303 C. G. L. 4340 R. G. S., or Chapter 16248, Acts of 1933, comprehend that claims or judgments recovered by the United States of America shall be within the purview of the trust purpose provided for by said Sections. The Legislature of Florida is presumed to have enacted its protective legislation for the benefit of Florida claims arising out of the corporation's transaction of business in Florida, and to have provided for the creation of this special trust fund deposit for their particular benefit.

In this case the United States asserts not only a right of participation in the security fund of New Jersey Fidelity & Plate Glass Insurance Company on deposit with the State Treasurer under Section 6302 C. G. L., 4339 R. G. S., but insists upon a priority of payment

of its claim out of such fund by reason of Sections 191 and 192, Title 31 U. S. C. A.

560 We deem it a sufficient answer in denial of the claim of the United States on the first proposition, to point out that by its own Acts of Congress the United States has undertaken to prescribe special legislation of its own choice for its own special protection in the case of defaulted surety company bonds, as will appear by reference to Sections 1 to 11, inclusive, Title 6, U. S. Code Ann. It seems obvious, therefore, that in view of its own express legislation on the subject, the United States cannot rely upon the Florida statutes as conferring statutory benefits with reference to surety bonds executed in Florida running to the United States. The State of Florida was under no duty to legislate for the special protection of the National Government. And in view of the provisions of the Federal Government's specially provided statutory rights under Section 191 and 192, Title 31 U. S. C. A., as against the general assets of the insolvent surety company enforceable against the general assets of the company in the hands of the domiciliary liquidator, or out of any residue of the special Florida deposits which may remain to be turned over to the domiciliary liquidator as general assets, after the satisfaction thereout of Florida claims, it would do violence to the ordinary rules of statutory construction to now so construe the Florida statutes as to make them inure to the special protection of the United States, as well as Florida creditors.

So the cross assignments of error filed by the United States on this appeal are overruled and the decision of the lower court as to the status of the claim interposed by the United States is approved as correct.

It follows that the order of October 27, A. D. 1934, herein appealed from should be modified to conform to the holding of this opinion and as so modified should be, and the same is hereby, affirmed. The motion to dismiss the appeal herein is denied on the authority of Gover v. Mann, 114 Fla. 128, 153 Sou. Rep. 895.

561 Motion to dismiss appeal denied.

Order appealed from, modified and affirmed.

Whitfield, C. J., and Ellis, Terell, Brown, and Buford, J. J., concur.

563 In Supreme Court of Florida

June Term A. D. 1935

WILLIAM H. KELLY, COMMISSIONER OF BANKING AND INSURANCE OF the State of New Jersey, and The London Operating Company, a Florida corporation, appellant

vs.

W. V. KNOTT, AS STATE TREASURER AND INSURANCE COMMISSIONER OF the State of Florida, and New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized and existing under the insurance laws of the State of New Jersey, appellees

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THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, appellant

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, and W. V. Knott, as Treasurer of the State of Florida, appellees

Appeals from the Circuit Court for Leon County (two cases consolidated)

Judgment

June 24, 1935

This cause having heretofore been submitted to the Court upon the transcript of the record of the order herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said order; it is, therefore, considered, ordered, and decreed by the Court that the said order of the Circuit Court
564 dated October 27, A. D. 1934, appealed from in this cause be and the same is hereby modified to conform to the holding of the Opinion filed by the Court this day and that so modified that the said order be and the same is hereby affirmed. It is further ordered by the Court that the motion to dismiss the appeal herein be and the same is hereby denied, it is further ordered by the Court that the Appellees do have and recover of and from the Appellant their costs by them in this behalf expended, which costs are taxed in the sum of $————, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Davis was this day ordered to be filed.

566 In Supreme Court of Florida

[Title omitted.]

Order extending time

July 5, 1935

567 Upon application of counsel it is ordered by the Court that counsel be allowed an extension of time until the 24th day of July, A. D. 1935, within which to file petitions for rehearing in the above styled cause.

569 In Supreme Court of Florida

[Title omitted.]

Order extending time

July 31, 1935

Counsel for the Insurance Commissioner of the State of New Jersey, a party in the above styled cause, having applied to the Court for a further extension of time in which to file a petition for rehearing in said cause and the United States being also a party hereto, and it being represented unto the Court that the said officials of the State of New Jersey and the Department of Justice of the United States are conducting negotiations relative to submitting these causes to the Supreme Court of the United States and need additional time in which to complete such negotiations, it is thereupon ordered by the Court that the aforesaid parties to these causes be and they are hereby allowed a further extension of time until August 15th, 1935, in which to file petitions for rehearing in this court.

It being understood that this is the final extension of time to be granted herein.

571 In Supreme Court of Florida

[Title omitted.]

Petition for rehearing on behalf of the United States

Filed July 23, 1935

Comes now the United States of America and files its petition for rehearing herein, and as grounds therefor respectfully shows
572 that the Court overlooked or failed to consider the following matters in the decision of this cause:

1. That the claims of the United States were based upon judgments, and that Section 6203 C. G. L. 1927 had been complied with by the United States by the service of notice upon the State Treasurer

and in accordance with said statute, and that therefore the United States had acquired vested rights which could not constitutionally be divested by subsequent legislation such as Senate Bill No. 288;

2. That the same remedies for collection of judgments obtained in federal courts in Florida are available to judgment creditors as are available to judgment creditors obtaining judgments in the state courts of Florida (Title 28 U. S. C. 727), and prior to the passage of Senate Bill No. 288, Sections 6302–3 C. G. L. Florida 1927, simply provided a remedy for collection of judgments, and said deposit with the State Terasurer was available to any judgment creditor obtaining a judgment in Florida, whether a citizen of the State of Florida or not;

3. That the United States of America has the same right to contract in Florida, and acquires and can enforce in the courts of Florida the same contract and property rights as any citizen of the State of Florida. (Cotton vs. U. S., 11 How. 288, 13 L. Ed. 675);

4. That the priority statute of the United States attaches to property of the debtor wherever situated as soon as it becomes operative,
and that said priority statute would did become operative as
573 soon as the New Jersey Fidelity & Plate Glass Insurance
Company voluntarily requested the State Banking & Insurance Department of New Jersey to liquidate said corporation. (Bramwell vs. U. S. F. & G. Co., 269 U. S. 483);

5. That the United States was not charged with knowledge that this deposit was a trust fund for the benefit of the State of Florida, its political subdivisions and citizens at the time the United States accepted the surety contracts upon which its claims are based, inasmuch as said contracts were entered into long prior to the passage of Senate Bill No. 288 and long prior to the time when there had been any such judicial construction of said Sections 6302–3.

JOHN W. HOLLAND,
United States Attorney.
WILLIAM A. PAISLEY,
574 *Assistant United States Attorney.*

575 In Supreme Court of Florida

[Title omitted.]

Petition for rehearing

Filed Aug. 15, 1935

Comes now the appellant, William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, and respectfully petitions the court to set aside its opinion and order entered herein, affirming the order of the Circuit Court of the Second Judicial Circuit, Leon County, Florida, of October 27, 1934, (Tr. 391–3) wherein
the court approved the account of the receiver and for
576 grounds of this petition appellant shows:—

I

The opinion and order recognized that Senate Bill No. 288 would offend Section 2, Article IV, and other sections of the Constitution of the United States, if it undertook to create any preference in favor of citizens of Florida out of the general assets of the New Jersey Company. The opinion undertook to assert that the said Senate Bill No. 288 did not "undertake to provide for any judicial seizure and distribution of the general assets of the New Jersey Fidelity and Plate Glass Insurance Company owned or found in Florida."

Sully, vs. American Nat. Bank, 178 U. S. 289, 20 Sup. Ct. Rep. 935, 44 L. Ed. 1972;

Blake, vs. McClung, 172 U. S. 239, 19 Sup. Ct. Rep. 165, 43 L. Ed. 432; 176 U. S. 59, 20 Sup. Ct. Rep. 307, 44 L. Ed. 371;

Maynard, vs. Grantite State Provident Ass'n., 92 Fed. 435;

Clark, vs. Willard, 292 U. S. 112, 54 Sup. Ct. Rep. 515, — L. Ed. —.

Nevertheless, in spite of this recognition of established law, the Supreme Court, by its opinion, sanctioned the administration of general assets. These general assets consisted in $1,275.78 (Tr. 387). This represents funds received by the receiver from the State Treasurer, interest on the Florida deposit that accumulated prior to the receivership. Moreover, it is the contention of the appellant that interest that accumulated on the Florida deposit after the Florida receivership represented no part of the deposit itself and no part of the fund pledged by the New Jersey Fidelity & Plate Glass Insurance Company by virtue of Section 6302, et seq., Compiled General Laws of Florida, 1927, at the time of the insolvency of the New
577 Jersey Company. This accumulated interest amounted to $5,941.61 (Tr. 387).

Without distinction or discrimination the receiver sought to administer these general assets, substantial in amount, and from the proceeds thereof the Supreme Court of Florida, by its opinion, sanctioned payment of the claims of those who had judgments founded on surety bonds, as well as those who did not have judgments, but whose claims were founded on surety bonds, and of claims of general creditors of the New Jersey Company, resident of the State of Florida.

Petitioner respectfully submits, therefore, that by precedents which the court itself recognizes, both opinion and order are in conflict with the Constitution of the United States to the extent and in the respects pointed out in appellant's assignments of error V to X, inclusive.

II

The court, in its opinion, held:

"The 1933 legislation clearly does not undertake to provide for any judicial seizure and distribution of the general assets of the New Jersey Fidelity and Plate Glass Insurance Company owned or found

in Florida to Florida creditors in preference to other creditors generally. It is therefore not violative of Section 2, Article IV of the U. S. Constitution as interpreted and construed in the case of Blake vs. McClung, 172 U. S. 239, 19 Sup. Ct. Rep. 165, 43 L. Ed. 432, although it may, and possibly does authorize any general assets of such insolvent corporation found in Florida to be brought within judicial control and conserved by the designated Florida court, until appropriate disposition thereof can be made as provided by applicable provisions of general law controlling the same."

By this portion of the opinion the court has impliedly ruled that general assets cannot be administered in Florida under and by virtue of any law, and it is unquestionably true that general assets not pledged for any specific purpose in this state must be returned to the domiciliary liquidator, to be administered by him.

578 Nevertheless, the opinion and order of this court, affirming the order of the nisi prius court of October 27, 1934 (Tr. 391-3), affirming the report of the receiver, sanctioned the administration of nearly $6,000 in general assets towards the payment of costs and expenses of administration of the Florida deposit, which the court otherwise has held to be pledged solely for the payment of creditors of the New Jersey Company resident of this state. The appellant conceives that the court bases its judgment solely upon the fact that pledged assets and pledged assets alone, were answerable for the debts of Florida citizens and not general assets, and in undertaking to administer the general assets the court has given offense, we respectfully submit, to Section 2, Article IV of the Constitution of the United States.

III

The opinion and order of the court, approving the receiver's reports, clearly holds that general assets of the New Jersey Company, not pledged under Section 6302, et seq., Compiled General Laws of Florida, 1927, cannot be administered in this state and that the Florida deposit can be administered only because it was segregated, set apart, and pledged for the protection of creditors of the New Jersey Company, resident of this state. Nevertheless, the order from which appeal has been taken, approving the report of the receiver, in fact approves of this statement of the receiver:

"The court has heretofore informally and orally announced the view that interest on the said securities accruing prior to the appointment of the receiver in the State of Florida would be

579 considered to be general assets, and that interest accruing subsequent to the appointment of the receiver would be considered as an accretion to the trust fund or trust assets and administered as such" (Tr. 381).

According to the report of the receiver (Tr. 387), this interest which accrued prior to the appointment of the receiver amounted to $1,275.78, and this money was commingled with funds which the nisi prius court and the Supreme Court, by its opinion, have held to be

trust funds pledged for a specific purpose. This commingling, therefore, of general assets with trust funds assets, is offensive to Article 2, Section IV of the Constitution of the United States, in that the Florida courts, by the opinion of the Supreme Court of Florida, seek to administer general funds without remitting them to the domiciliary liquidator, free and clear of the claims of the Florida creditors, as well as the costs of administration.

IV

The opinion and order of the Supreme Court of Florida undertakes to marshal general assets of the New Jersey Company in Florida for distribution amon't Florida residents.

Respectfully submitted.

H. U. FEIBELMAN,

Solicitor for Appellant, William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey.

581 In Supreme Court of Florida

[Title omitted.]

Order denying petitions for rehearing

September 18, 1935

Petitions for rehearing having been filed in the above styled causes by counsel for the United States of America and the
582 Counsel for William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey and said petitions having been duly considered, it is ordered and adjudged by the Court that each of the said petitions be and it is hereby denied.
583

584 In Supreme Court of Florida

[Title omitted.]

Motion for order staying mandate, etc.

Filed Sept. 18, 1935

Comes now New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey Corporation, and William H. Kelly, as Commissioner of Banking and Insurance of State of New Jersey, Appellants in the above cause, by their undersigned attorney, and respectfully shows unto the Court that:
585 A decision has been rendered in the bove entitled consolidated cause which was adverse to the principals of law contended for by the Appellants; that thereafter a Petition for a

Rehearing was filed in said causes which sought to have the Court review its ruling on the principals of law contended for by the Appellants; that thereafter on the 18th day of September, A. D. 1935, the Court entered an order denying the Petition for Rehearing.

That Appellants are desirous of taking a Writ of Certiorari herein to the Supreme Court of the United States.

Appellants respectfully pray the Court, therefore, to enter an order in said cause granting them sixty (60) days' time within which to prepare the transcript of record and other papers which are necessary to carry said causes to the Supreme Court of the United States.

Appellants respectfully further pray the Court for the entry of an order in said causes withholding the mandate, and holding said cases in status quo for a period of sixty (60) days until they have applied to the United States Supreme Court for a Writ of Certiorari herein.

Respectfully submitted.

(Signed) HERBERT U. FEIBELMAN,
W. K. WHITFIELD,
(Signed) W. K. WHITFIELD,
Attorney for Petition.

587 In Supreme Court of Florida

[Title omitted.]

Order staying issuance of Mandates, etc.

September 18, 1935

Counsel for New Jersey Fidelity & Plate Glass Insurance Company and for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, Appellants in the above
588 styled causes having moved the Court for an order in said causes granting them sixty days' time within which to prepare transcript of record and other papers which are necessary for making application to the United States Supreme Court for a Writ of Certiorari in said causes and for an order directing the Clerk of this Court to withhold the issuance of Mandates in said causes for a period of sixty days from this date pending their application to the United States Supreme Court for a Writ of Certiorari herein and such motion having been duly considered, it is ordered and adjudged by the Court that said motion be and it is hereby granted that the Clerk of this Court do withhold the issuance of the Mandates in the above styled causes for a period of sixty days from this date and until the further order of the Court in order that said parties to this cause may have such time within which to submit application to the Supreme Court of the United States for a Writ of Certiorari.

590 In Supreme Court of Florida

[Title omitted.]

Motion to substitute name of new Commissioner of Banking and Insurance of the State of New Jersey

Filed Nov. 6, 1935

Comes now the appellant, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, and shows unto the court that by operation of the law he is no longer Commissioner of Banking and Insurance of the State of New Jersey, and CARL K. WITHERS is now the regularly appointed and qualified Commissioner of Banking and Insurance of the State of New Jersey.

Wherefore, the appellant moves that his name be stricken from the appeal now pending in the Supreme Court of Florida, and from all further proceedings herein, and that the name of CARL K. WITHERS, as Commissioner of Banking and Insurance of the State of New Jersey, be substituted in place of the said William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey.

HERBERT U. FEIBELMAN,
Attorney for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey.

591 In Supreme Court of Florida

[Title omitted.]

Motion to substitute name of new Commissioner of Banking and Insurance of the State of New Jersey

Filed Nov. 6, 1935

Comes now Carl K. Withers, and shows unto the court that he is now the regularly appointed and qualified Commissioner of Banking and Insurance of the State of New Jersey, in place of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, appellant herein, and joined in the request that the name of Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, be substituted for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, wherever the same appears in these proceedings, and that the said Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, be, recognized by the court in all further proceedings herein, as the appellant.

HERBERT U. FEIBELMAN,
Attorney for Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey.

593 In Supreme Court of Florida

[Title omitted.]

Order substituting name of new commissioner of banking and insurance of the State of New Jersey

November 6, 1935

This cause coming on to be heard this day upon motion of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, to substitute the name of Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, wherever the name of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, appears, and it appearing unto the court from said motion and from a motion by Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, that the term of office of the said William H. Kelly has expired by operation of law and that the said Carl W. Withers is now the regularly appointed and qualified Commissioner of Banking and Insurance of the State of New Jersey, it is

Ordered that the motions be granted and the name of Carl K. Withers as Commissioner of Banking and Insurance of the State of New Jersey, is hereby substituted in lieu and in place of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, wherever the name of the said William H. Kelly appears in these proceedings, and the said Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, is hereby considered the appellant in this cause.

A true copy.

Test: *Clerk Supreme Court.*

594 [Clerk's certificate to foregoing transcript omitted in printing.]

595 Know all men by these presents, that on the 12th day of February, A. D. 1935, came the Appellants, Louis F. Snedigar and George J. Baya, copartners doing business under the firm name and style of Snedigar & Baya, in that certain cause wherein: The London Operating Company, a Florida corporation, was Plaintiff and New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, and W. V. Knott, as Treasurer of the State of Florida, et al., were Defendants, and filed in the Supreme Court of Florida a certified Transcript of the Record of the Decree of the Circuit Court of Leon County, Florida, from their appeal in the said cause, which certified Transcript of the Record is in words and figures as follows, to wit:

596–597 In Circuit Court of Leon County

Statement as to former record

On December 8, 1934, I prepared and certified a transcript of the record of the judgment or decree in the suit of The London Operating Company, a Florida corporation, vs. New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, and W. V. Knott, which said transcript contained a true and correct copy of the bill of complaint in said cause, the answer of the defendant, W. V. Knott, order appointing Receiver to take charge of the assets, the several claims of Snedigar & Baya, the Receiver's report on said claims, decree of the Circuit Court of Leon County dated August 7, 1934, recorded in Chancery Order Book 11 at Page 362, and decree of said Court dated October 27, 1934, recorded in Chancery Order Book 11 at Page 464.

PAUL V. LANG,
Clerk of the Circuit Court for Leon County.

598 In Circuit Court of Leon County

Consolidated, No. 3171

[Title omitted.]

Notice of entry of appeal

Filed Dec. 19, 1934

Come now Louis F. Snedigar and George J. Baya, copartners, doing business under the firm name and style of Snedigar & Baya, and take and enter this their several appeals to the Supreme Court of Florida from an order made and entered by the Circuit Court of Leon County, dated August 7, 1934, and recorded in Chancery Order Book 11, Page 362, Records of Leon County, Florida; and also from an order made and entered by the said Circuit Court of Leon County, dated October 27, 1934, and recorded in Chancery Order Book 11, Page 464, Records of said Court; and make said appeal returnable before the said Supreme Court of Florida on January 31, 1935.

The plaintiff, The London Operating Company, a Florida corporation, and the defendants, New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, W. V. Knott, as Treasurer of the State of Florida, and D. M. Lowry, as Receiver in
599 Florida of New Jersey Fidelity & Plate Glass Insurance Company, will take notice of this appeal.

Dated this December 17, 1934.

THOMAS H. ANDERSON,
Solicitor for Cross-Appellants.

STATE OF FLORIDA,
County of Leon:

I, Paul V. Lang, Clerk of the Circuit Court in and for the County aforesaid do hereby certify that the foregoing Notice of Entry of Appeal was filed in my office on December 19th, 1934, and was the same day duly recorded in Chancery Order Book No. 11 at page 530 of the public records of said County.

Given under my hand and the seal of said Court this 19th day of December, A. D. 1934.

[SEAL.] PAUL V. LANG, *Clerk.*

In Circuit Court of Leon County

No. 3171

[Title omitted.]

Assignments of error

Filed Jan. 10, 1935

Come now, Louis F. Snedigar and George J. Baya, copartners doing business under the firm name and style of Snedigar & Baya, and assign as the several errors on which they intend to rely in the Supreme Court of Florida for the reversal of the decrees herein appealed from, the following:

1. The Court erred in making and entering order dated August 7, 1934, and recorded in Chancery Order Book 11 at Page 362, decreeing that the claims of the said Snedigar & Baya are not payable out of the special deposit made with the State Treasurer.

2. The Court erred in making and entering order dated October 27, 1934, recorded in Chancery Order Book 11 at Page 464, refusing to presently pay out of the funds in the hands of said Re-
600 ceiver, or to be derived from the sale of the securities in his possession, the claims of the said Snedigar & Baya.

And the appellants pray for the reversal of said decrees, etc.

THOMAS H. ANDERSON,
Solicitor for Appellants.

Received a copy of the above and foregoing Assignments of Error this January 9th, 1935, subject to legal objections.

HERBERT U. FEIBELMAN,
Solicitor for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey.

STANLEY C. MYERS,
Solicitor for The London Operating Company, a Florida Corporation.

STATE OF FLORIDA,
County of Dade ss:

ANNABEL MCCRAW, being first sworn, says that she is employed in the office of Thomas H. Anderson, Solicitor for Snedigar & Baya; that on January 9, 1935, she mailed a true and correct copy of the foregoing Assignments of Error to Honorable Cary D. Landis, Attorney General of Florida, at Tallahassee, Florida, as solicitor for W. V. Knott, State Treasurer and ex officio Insurance Commissioner of the State of Florida; and also mailed a true and correct copy of the above and foregoing Assignments of Error to Messrs. Waller & Papper, Tallahassee, Florida, solicitors for D. M. Lowry, Receiver.

ANNABEL MCCRAW.

Subscribed and sworn to before me at Miami, Florida, this January 9th, 1935.

[SEAL.] BEATRICE JACOBS,
Notary Public State of Florida at Large.

My Commission expires Oct. 13, 1935.

601 In Circuit Court of Leon County

[Title omitted.]

Directions for making up transcript of record

Filed Jan. 10, 1935

The Clerk of the above Court will please commence the preparation of a transcript o fthe record in the above cause on appeal to the Supreme Court of Florida on January 28, 1935, in accordance with the following directions and such other directions as may be given by the other parties to this cause:

1. Recite that on December 8. 1934, you prepared and certified a transcript of the record of the judgment or decree in the suit of The London Operating Company vs. New Jersey Fidelity & Plate Glass Insurance Company and W. V. Knott, and that said transcript contained a true and correct copy of the bill of complaint in said cause, the answer of the defendant W. V. Knott, order appointing Receiver to take charge of the assets, the several claims of Snedigar & Baya, the Receiver's report on said claims, decree of the Circuit Court of Leon County dated August 7, 1934, recorded in Chancery Order Book 11 at Page 362, and decree of said Court dated October 27, 1934, recorded in Chancery Book 11 at Page 464.

602 2. Recite the filing and recordation and copy in full the Notice of Entry of Appeal of Louis F. Snedigar and George J. Baya.

3. Recite the filing and copy in full, together with receipts of opposing counsel for copies of same and affidavit of service, the Assignments of Error of Louis F. Snedigar and George J. Baya.

4. Recite the filing and copy in full, including receipts of opposing counsel for copies of same and affidavit of service, these written directions for preparing transcript of record.

5. Omit all other papers and proceedings except such as the other parties may direct you to include.

6. Attach to the transcript a certificate in accordance with the law and the rules of the Supreme Court.

THOMAS H. ANDERSON,
Solicitor for Appellants.

Received a copy of the above and foregoing Directions for Making up Transcript of Record, subject to legal objections, this January 9th, 1935.

HERBERT U. FEIBELMAN,
Solicitor for Willam H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey.
STANLEY C. MYERS,
Solicitor for The London Operating Company, a Florida corporation.

STATE OF FLORIDA,
County of Dade, ss:

ANNABEL MCCRAW, being first sworn, says that she is employed in the office of Thomas H. Anderson, Solicitor for Snedigar & Baya; that on January 9, 1935, she mailed a true and correct copy of the foregoing Directions for Making up Transcript of
603 Record to Honorable Cary D. Landis, Attorney General of Florida, at Tallahassee, Florida, as solicitor for W. V. Knott, State Treasurer and ex officio Insurance Commissioner of the State of Florida; and also mailed a true and correct copy of the above and foregoing Directions to Messrs. Waller & Pepper, Tallahassee, Florida, solicitors for D. M. Lowry, Receiver.

ANNABEL MCCRAW.

Subscribed and sworn to before me at Miami, Florida, this January 9th, 1935.

[SEAL] BEATRICE JACOBS,
Notary Public, State of Florida at Large.

My commission expires October 13, 1935.

[Clerk's certificate to foregoing transcript omitted in printing.]

605 In Supreme Court of Florida

June Term, A. D. 1935

Leon County

LOUIS F. SNEDIGAR AND GEORGE J. BAYA, COPARTNERS DOING BUSINESS Under the Firm Name and Style of Snedigar & Baya, appellants

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et al., appellees

An appeal from the Circuit Court for Leon County; J. B. Johnson, Judge.

Thomas H. Anderson, for Appellants; Herbert U. Feibelman, Stanley C. Myers, and Waller & Pepper for Appellees.

Opinion

Filed June 24, 1935

DAVIS, *J.:* This is a separate appeal prosecuted by Louis F. Snedigar and George J. Baya, partners under the name and style of Snedigar & Baya, from certain interlocutory orders entered by the Circuit Court of Leon County in the case of London Operating Company versus New Jersey Fidelity & Plate Glass Insurance Company—a suit in chancery in which they were intervening claimants as provided for by Chapter 16247 and Chapter 16248, Acts of 1933, relating to insolvent foreign surety companies. The orders appealed from were entered August 7, 1934, and October 27, 1934, respectively. The order of October 27, 1934, has been considered and dealt with by this Court in a separate appellate proceeding decided at the present term (Kelly verus Knott, opinion filed June 24, 1935), so this opinion will relate particularly to the court's interlocutory order of August 7, 1934, insofar as it disposed of claims 35 to 39, aggre-
606 gating the sum of $1,029.48 claimed by appellants, Snedigar & Baya, which claims were rejected by the Circuit Court.

The appellants' theory is that Section 6302 C. G. L., 4339 R. G. S., and Chapter 16248, Acts 1933, declaratory of the policy thereof, specifically authorize and require the payment of "all claims against" an insolvent surety company out of the special securities deposited with the State Treasurer to enable it to acquire a right to transact a surety-company business in Florida, and that the wording of such statute is not subject to the restricted interpretations placed on it in the court below, which was to the effect that the term "claims against it" as used in Section 6302 C. G. L., supra, means only such claims as arise against such surety company out of Florida bonds and contracts of suretyship executed by it in this State.

The construction contended for by the appellants is approved by this Court as the correct one, on the authority of the opinion adopted and filed by this Court in the case of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, vs. William V. Knott, as State Treasurer and ex-officio Insurance Commissioner, and New Jersey Fidelity & Plate Glass Insurance Company, decided at the present term.

So much of the order of August 7, 1934, as rejected the claims of appellants is reversed, and the cause remanded to the Circuit Court for appropriate proceedings not inconsistent with this opinion. The order of October 27, 1934, is modified to conform to this opinion, and as so modified is affirmed.

Reversed in part and remanded.

Whitfield, C. J., and Ellis, Terrell, Brown, and Buford, J. J., concur.

608 In Supreme Court of Florida

June Term, A. D. 1935

LOUIS F. SNEDIGAR AND GEORGE J. BAYA, COPARTNERS, DOING BUSINESS Under the Firm Name and Style of Snedigar & Baya, appellants,

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et al., appellees

An Appeal From the Circuit Court for Leon County

Judgment

June 24, 1935

This cause having heretofore been submitted to the Court upon the transcript of the record of the order herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is error in the said order; it is therefore considered, ordered, and decreed by the Court that the said order of the Circuit Court of August 7, 1934, as rejected the claims of appellants is reversed, and the cause remanded to the Circuit Court for appropriate proceedings not inconsistent with this Court's Opinion. The order of October 27, 1934, is modified to conform to this Court's Opinion and as so modified is affirmed; it is further ordered by the Court that the Appellant do have and recover of and from the Appellee his costs by him in this behalf expended, which costs are taxed in the sum of $————, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Davis was this day ordered to be filed.

609–610 In Supreme Court of Florida

Leon County

LOUIS F. SNEDIGAR AND GEORGE J. BAYA, COPARTNERS, DOING BUSINESS Under the Firm Name and Style of Snedigar & Baya, appellants

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et al., appellees

Petition for rehearing

Filed Aug. 15, 1935

Comes now the appellee, William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, and respectfully petitions the Court to set aside its opinion and order entered herein, wherein the court reversed so much of the order of the Circuit Court of the Second Judicial Circuit, Leon County, Florida, of August 7, 1934 (Tr. 366), as rejects the claims of appellants, and modifies the order of the Circuit Court of the Second Judicial Circuit, Leon County, Florida, of October 27, 1934 (Tr. 391–3), to conform with the said opinion and judgment, and for grounds of this petition appellee shows:

I

The opinion and order recognized that Senate Bill No. 288 would offend Section 2, Article IV, and other sections of the Constitution of the United States if it undertook to create any preference in favor of citizens of Florida out of the general assets of the New Jersey Company. The opinion undertook to assert that the said
611 Senate Bill No. 288 did not "undertake to provide for any judicial seizure and distribution of the general assets of the New Jersey Fidelity and Plate Glass Insurance Company owned or found in Florida."

Sully vs. American Nat. Bank, 178 U. S. 289, 20 Sup. Ct. Rep. 935, 44 L. Ed. 1972;

Blake vs. McClung, 172 U. S. 239, 19 Sup. Ct. Rep. 165, 43 L. Ed. 432; 176 U. S. 59, 20 Sup. Ct. Rep. 307, 44 L. Ed. 371;

Maynard vs. Granite State Providence Ass'n, 92 Fed. 435;

Clark vs. Willard, 292 U. S. 112, 54 Sup. Ct. Rep. 615, — L. Ed. —.

Nevertheless, in spite of this recognition of established law, the Supreme Court, by its opinion, sanctioned the administration of general assets. These general assets consisted in $1.275.78 (Tr. 387). This represents funds received by the receiver from the State Treasurer, interest on the Florida deposit that accumulated prior to the receivership. Moreover, it is the contention of the appellee that interest that accumulated on the Florida deposit after the Florida receivership represented no part of the deposit itself and no part of the fund pledged by the New Jersey Fidelity & Plate Glass Insur-

ance Company by virtue of Section 6302, et seq., Compiled General Laws of Florida, 1927, at the time of the insolvency of the New Jersey Company. This accumulated interest amounted to $5,941.61 (Tr. 387).

Without distinction or discrimination, the receiver sought to administer these general assets, substantial in amount, and from the proceeds thereof the Supreme Court of Florida, by its opin-
612 ion, sanctioned payment of the claims of those who had judgments founded on surety bonds, as well as those who did not have judgments, but whose claims were founded on surety bonds, and of claims of general creditors of the New Jersey Company, resident of the State of Florida.

Petitioner respectfully submits, therefore, that by precedents which the court itself recognizes, both opinion and order are in conflict with the Constitution of the United States to the extent and in the respects pointed out in appellant's assignments of error V to X, inclusive, in the case of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, et al., appellants, versus W. V. Knott, as state treasurer and insurance commissioner of the state of Florida, et al., appellees.

II

The court, in its opinion in the case of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, et al., appellants, versus W. V. Knott, as state treasurer and insurance commissioner of the state of Florida, held:

"The 1933 legislation clearly does not undertake to provide for any judicial seizure and distribution of the general assets of the New Jersey Fidelity and Plate Glass Insurance Company owned or found in Florida to Florida creditors in preference to other creditors generally. It is, therefore, not violative of Section 2, Article IV, of the U. S. Constitution, as interpreted and construed in the case of Blake vs. McClung, 172 U. S. 239, 19 Sup. Ct. Rep. 165, 43 L. Ed. 432, altho it may, and possibly does, authorize any general assets of such insolvent corporation found in Florida to be brought within judicial control and conserved by the designated Florida court until appropriate disposition thereof can be made as provided by applicable provisions of general law controlling the same."

613 By this portion of the opinion the court has impliedly ruled that general assets cannot be administered in Florida under and by virtue of any law, and it is unquestionably true that general assets not pledged for any specific purpose in this state must be returned to the domiciliary liquidator, to be administered by him.

Nevertheless, the opinion and order of this court, in the case of William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, appellant, versus W. V. Knott, as state treasurer and insurance commissioner of the state of Florida, appellee, affirming the order of the nisi prius court of October 27, 1934 (Tr. 391–3), affirming the report of the receiver, sanctioned the admin-

istration of nearly $6,000 in general assets towards the payment of costs and expenses of administration of the Florida deposit, which the court otherwise has held to be pledged solely for the payment of creditors of the New Jersey Company resident of this state. The appellee conceives that the court bases its judgment solely upon the fact that pledged assets and pledged assets alone, were answerable for the debts of Florida citizens and not general assets, and in undertaking to administer the general assets the court has given offense, we respectfully submit, to Section 2, Article IV of the Constitution of the United States.

III

The opinion and order of the court, approving the receiver's reports, clearly holds that general assets of the New Jersey Company, not pledged under Section 6302, et seq., Compiled General Laws of Florida, 1927, cannot be administered in this state, and that
614 the Florida deposit can be administered only because it was segregated, set apart, and pledged for the protection of creditors of the New Jersey Company, resident of this state. Nevertheless, the orders from which appeal has been taken, approving the report of the receiver, in fact approves of this statement of the receiver:

"The Court has heretofore informally and orally announced the view that interest on the said securities accruing prior to the appointment of the receiver in the State of Florida would be considered to be general assets, and that interest accruing subsequent to the appointment of the receiver would be considered as an accretion to the trust fund or trust assets and administered as such" (Tr. 381).

According to the report of the receiver (Tr. 387) this interest which accrued prior to the appointment of the receiver amounted to $1,275.78, and this money was commingled with funds which the nisi prius court and the Supreme Court, by its opinion, have held to be trust funds pledged for a specific purpose. This commingling, therefore, of general assets with trust fund assets, is offensive, to Article 2, Section IV of the Constitution of the United States, in that the Florida courts, by the opinion of the Supreme Court of Florida, seek to administer general funds without remitting them to the domiciliary liquidator, free and clear of the claims of Florida creditors, as well as the costs of administration.

IV

The opinion and order of the Supreme Court of Florida undertakes to marshal general assets of the New Jersey Company in Florida for distribution amonst Florida residents.
615 Respectfully submitted.

H. U. FEIBELMAN,
Solicitor for Appellant, William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey.

617 In Supreme Court of Florida

[Title omitted.]

Order denying rehearing

September 18, 1935

Petitions for rehearing having been filed in the above styled causes by counsel for the United States of America and the
618 Counsel for William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, and said petitions having been duly considered, it is ordered and adjudged by the Court that each of the said petitions be and it is hereby denied.

620 In Supreme Court of Florida

LOUIS F. SNEDIGAR & GEORGE J. BAYA, CO-PARTNERS DOING BUSINESS Under the Firm Name and Style of Snedigar & Baya, appellants

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et als., appellees

Motion for order staying mandate, etc.

Filed Sept. 18, 1935

Comes now New Jersey Fidelity & Plate Glass Insurance Company, a New Jersey corporation, Appellees in the above-entitled cause, by its undersigned attorney, and respectfully shows unto the Court that:

A decision has been rendered in the above-entitled cause which was adverse to the principals of law contended for by the Appellees; that thereafter a Petition for Rehearing was filed in said cause which sought to have the Court review its ruling on the principals of law involved; that thereafter on the 18th day of September, A. D. 1935, the Court entered an Order denying the said Petition for Rehearing.

That Appellees are desirous of taking a Writ of Certiorari or Appeal to the Supreme Court of the United States. That the above-entitled cause involves the same questions of law as the cases of William H. Kelly, etc., vs. W. V. Knott, etc., and The London Operating Company, etc., vs. New Jersey Fidelity & Plate Glass Insurance Company, etc. The Appellees would further show that all of these cases have been consolidated.

621 Appellees respectfully pray the Court, therefore, to enter an Order in said causes granting them sixty (60) days' time within which to prepare the transcript of record and other papers which are necessary to carry said causes to the Supreme Court of the United States.

Appellants respectfully further pray the Court for the entry of an Order in said causes withholding the mandate, and holding said case in status quo for a period of sixty (60) days until they have applied to the United States Supreme Court for a Writ of Certiorari herein or take an appeal.

In support of this Motion, Counsel would further show that he has just recently been employed in this case. That on September 18th, 1935, this Honorable Court entered an Order withholding the Mandate in the cases of William H. Kelly, etc., vs. W. V. Knott, and in the case of The London Operating Company, etc., vs. New Jersey Fidelity & Plate Glass Insurance Company, in order that these cases could be taken to the Supreme Court of the United States. At that time the undersigned counsel did not know of the case of Louis F. Snedigar, etc., vs. New Jersey Fidelity & Plate Glass Insurance Company. Appellees, therefore, respectfully prays for the aforesaid relief.

Respectfully submitted.

William K. Whitefield,
(Signed) WILLIAM K. WHITEFIELD.

623 In Supreme Court of Florida

[Title omitted.]

Order staying issuance of mandates, etc.

September 18, 1935

Counsel for New Jersey Fidelity & Plate Glass Insurance Company and for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, Appellants, in the above-styled
624 causes having moved the Court for an order in said causes granting them sixty days' time within which to prepare transcript of record and other papers which are necessary for making application to the United States Supreme Court for a Writ of Certiorari in said causes and for an order directing the Clerk of this Court to withhold the issuance of Mandates in said causes for a period of sixty days from this date pending their application to the United States Supreme Court for a Writ of Certiorari herein and such motion having been duly considered, it is ordered and adjudged by the Court that said motion be, and it is hereby, granted that the Clerk of this Court do withhold the issuance of the Mandates in the above-styled causes for a period of sixty days from this date and until the further order of the Court in order that said parties to this cause may have such time within which to submit application to the Supreme Court of the United States for a Writ of Certiorari.

625–626 In Supreme Court of Florida

LOUIS F. SNEDIGAR ET AL., APPELLANTS

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et al., appellees.

Motion for order vacating order staying mandate

(Filed Sept. 30, 1935)

The appellants respectfully move this court to vacate and set aside the order made and entered herein on September 18, 1935, giving to New Jersey Fidelity & Plate Glass Insurance Company and William H. Kelly, as commissioner of banking and insurance in the State of New Jersey, sixty days within which to prepare a transcript of the record and to make application to the Supreme Court of the United States for a writ of certiorari and directing the clerk of this court to withhold the issuance of the mandate in this cause for a period of sixty days upon the following grounds:

1. By Section 8 of Chapter 229, 43 Statute 936, Acts of February 13, 1935, subsection d, it is provided that a state of execution on an application to the Supreme Court for a writ of certiorari may be granted and may be conditioned upon the giving of good and sufficient security; that if the aggrieved party fails to make application for such writ within the period allotted therefor or fails to obtain an order granting his application or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

627 2. No such security was required by this court to be given by the said New Jersey Company and the said Kelly and the supersedeas bond heretofore given by them on appeal to this court from the decree of the Circuit Court of Leon County does not run in favor of these appellants and they cannot recover damages thereon for the possible failure of the said New Jersey Company and the said Kelly to file their petition in the Supreme Court of the United States or to make their plea good.

3. The payment of your petitioners' claim is being held up by reason of the entry of the order of September 18, 1935; and your petitioners will be compelled to employ counsel to resist the application for certiorari or, if the same is granted, to defend the decree of this court upon the merits in the Supreme Court of the United States and will be put to costs therein for which they should be granted adequate security by the said New Jersey Fidelity & Plate Glass Insurance Company and William H. Kelly as commissioner, as aforesaid.

Wherefore your petitioners pray that this court will make and enter an order herein vacating and setting aside that portion of its

said order of September 18, 1935, staying the issuance of the mandate herein unless the said New Jersey Fidelity & Plate Glass Insurance Company and the said William H. Kelly, as commissioner as aforesaid, give the security contemplated by subsection d of Section A of Chapter 229 aforesaid.

THOMAS H. ANDERSON,
Solicitor for Petitioners.

629 In Supreme Court of Florida

LOUIS F. SNEDIGAR, ET AL., APPELLANTS

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et al., appellees

Order on motion for order vacating order, etc.

November 1, 1935

This cause came on to be heard upon the Appellants' application to require the Appellees, New Jersey Fidelity & Plate Glass Insurance Company, and William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, to give them security pending the Appellees', New Jersey Fidelity & Plate Glass Insurance Company, and William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, application to the Supreme Court of the United States for a Writ of Certiorari, and it was ordered by the Court that the said Appellant's application be granted, and the Appellees, New Jersey Fidelity & Plate Glass Insurance Company, and William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, shall, within ten days of the date of this order, make and file in this court, to be approved by one of the judges of this court, a bond with sufficient security payable to the Appellants, and conditioned that if the Appellees, New Jersey Fidelity & Plate Glass Insurance Company and William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, fail to make application for such writ within the period heretofore allowed therefor, or fail to obtain an order granting their application, or fail to make their plea good in the Supreme Court of the United States, they shall answer for all damages, costs, which the Appellants may sustain by reason of the staying of the execution and enforcement of the judgment or decree heretofore
630 entered in this cause, and also the staying of the execution and enforcement of the decrees of the decrees of the Circuit Court of Leon County from which this appeal is taken. In default of the making and filing of such bond within said time, the mandate of this court in this cause will forthwith issue.

631 [Clerk's certificate to foregoing transcript omitted in printing.]

632 In Supreme Court of Florida

LOUIS F. SNEDIGAR AND GEORGE J. BAYA, CO-PARTNERS DOING Business Under the Firm Name of and Style of Snedigar & Baya, appellants

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et al., appellees

Motion to substitute name of new Commissioner of Banking and Insurance of the State of New Jersey

Comes now the appellee, William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, and shows unto the court that by operation of the law he is no longer Commissioner of Banking and Insurance of the State of New Jersey, and Carl K. Withers is now the regularly appointed and qualified Commissioner of Banking and Insurance of the State of New Jersey.

Wherefore, the appellee moves that his name be stricken from the appeal now pending in the Supreme Court of Florida, and from all further proceedings herein, and that the name of Carl K. Withers as Commissioner of Banking and Insurance of the State of New Jersey, be substituted in place of the said William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey.

(Signed) HERBERT U. FEIBELMAN,
Attorney for William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey.

633 In Supreme Court of Florida

LOUIS F. SNEDIGAR AND GEORGE J. BAYA, CO-PARTNERS DOING Business Under the Firm Name of and Style of Snedigar & Baya, appellants

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et al., appellees

Motion to substitute name of new Commissioner of Banking and Insurance of the State of New Jersey

Comes now Carl K. Withers, and shows unto the court that he is now the regularly appointed and qualified Commissioner of Banking and Insurance of the State of New Jersey, in place of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, appellee herein, and joins in the request that the name of Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, be substituted for William H. Kelly

as Commissioner of Banking and Insurance of the State of New Jersey, wherever the same appears in these proceedings, and that the said Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, be recognized by the court in all further proceedings herein, as the appellee.

HERBERT U. FEIBELMAN,
Attorney for Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey.

634 In Supreme Court of Florida

LOUIS F. SNEDIGAR AND GEORGE J. BAYA, CO-PARTNERS DOING BUSINESS Under the Firm Name and Style of Snedigar & Baya, appellants

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et al., appellees

Order substituting name of new commissioner of banking and insurance of the State of New Jersey

November 14, 1935

This cause coming on to be heard this day upon motion of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, to substitute the name of Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, wherever the name of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, appears, and it appearing unto the court from said motion and from a motion by Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, that the term of office of the said William H. Kelly has expired by operation of law and that the said Carl K. Withers is now the regularly appointed and qualified Commissioner of Banking and Insurance of the State of New Jersey, it is

Ordered that the motions be granted and the name of Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, is hereby substituted in lieu and in place of William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, whe'ver the name of the said William H. Kelly appears in these proceedings, and the said Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey is hereby considered the appellee in this cause.

635 In Supreme Court of Florida

LOUIS F. SNEDIGAR AND GEORGE J. BAYA, Co-partners Doing Business Under the Firm Name of and Style of Snedigar & Baya, appellants

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, a New Jersey Corporation, et al., appellees

Petition for further stay of mandate

Comes now Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, Appellee, and respectfully shows unto the court that on, to wit, September 18, 1935, the court did enter its order directing that its mandate not issue for sixty days and until further order of the court, in order that the parties to the cause may have such time within which to submit application to the Supreme Court of the United States for a writ of certiorari.

Petitioner further shows that he has under the law ninety days within which to submit such application and that by reason of the far-reaching effect of the opinion of the Supreme Court of Florida in the liquidation of the assets of the New Jersey Fidelity and Plate Glass Insurance Company, a corporation organized and existing under the insurance laws of the State of New Jersey, through many jurisdictions and the extensive business of the United States of America, itself directly affected by the decision in the case of Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, et al., versus W. V. Knott, as State Treasurer and Insurance Commissioner of the State of Florida, et al., referred to in the opinion in this cause, and by reason of the great expense of preparing, certifying, and printing the record, and filing application and brief, it has not been possible for the Banking Department of the State of New Jersey and the Department of Justice of the United States of America to come to an agreement regarding the fil-

636 ing of the application for writ of certiorari, that under the law the said appellee had ninety days within which to file said application and has, within less than sixty days, decided to file such application, but the said application, together with brief, cannot be prepared and filed on or before November 18, 1935.

Petitioner further shows that the instant case is of wide-spread concern not only to numerous creditors and citizens of Florida but also to the administration of this and similar funds in other jurisdictions, and it is of importance that all rights of the appellee should be carefully considered and determined.

Wherefore, the petitioner prays that the court will enter its order withholding the issuance of the mandate for thirty days after November 18, 1935, within which time the appellee may file his application for writ of certiorari in the Supreme Court of the United States,

and if said application be filed within said time the mandate of this court not issue until the final determination of the cause by the Supreme Court of the United States.

(Signed) HERBERT U. FEIBELMAN.
Attorney for Appellee, Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey.

637 [Title omitted.]

NOTICE

You will please take notice that at 10:00 o'clock a. m., or as soon thereafter as counsel can be heard, on November 12, 1935, at Tallahassee, Florida, application will be made to the Supreme Court of Florida for a further stay of mandate in the above-styled causes, pending the decision of the Supreme Court of the United States, upon certiorari on the part of the United States of America and the State Liquidator for New Jersey Fidelity and Plate Glass Insurance Company.

638 You are invited to be present at said time and place if you have any objections to advance to the entry of such order.

This 8th day of November, A. D. 1935.

United States Attorney.

Assistant United States Attorney.
HERBERT U. FEIBELMAN.
Attorney for Carl K. Withers, Commissioner of Banking and Insurance of the State of New Jersey (substituted for William H. Kelly, as such Commissioner).

I hereby certify that I have this 8th day of November, A. D. 1935, deposited in the United States Post Office at Jacksonville, Florida, copy of the foregoing notice, securely sealed in a Government franked envelope, addressed to:

London Operating Company, c/o Stanley C. Myers, Miami, Florida.

Jay-Thorpe, Inc., c/o Roland W. Granat, Seybold Building, Miami, Fla.

Hon. John W. Holland, U. S. Attorney, Miami, Florida.

Hon. Vernon Hawthorne, State Attorney, Miami, Florida.

Hernando State Bank, Brooksville, Florida.

Messrs. Sutton, Tillman & Reeves, Attorneys at Law, Tampa, Florida.

Mr. N. R. Robinson, c/o Patterson & Knight, Attorneys, Miami, Florida.

Mr. Wellborn C. Phillips, Orlando, Florida.

Snedigar & Baya, Attorneys at Law, Miami, Florida.

Mr. Herbert U. Feibelman, Attorney at Law, 512-3-4 First National Bank Building, Miami, Florida.
Burbridge Realty Company, c/o Otto C. Stegeman, Attorney at Law, Miami, Florida.
Mr. Giles J. Patterson, Attorney at Law, Jacksonville, Florida.
Mr. Joseph M. Schlesinger, c/o Southern Bail Bond Co., 511 W. Forsyth Street, Jacksonville, Florida.
Mr. Claude Gray, Attorney at Law, Orlando, Florida.
Mr. Paul D. McGarry, Attorney at Law, Miami, Florida.
Mr. H. A. Love, Jr., 613 Professional Building, Jacksonville, Fla.
Hon. W. V. Knott, State Treasurer, Tallahassee, Florida.
Hon. Cary D. Landis, Attorney General, Tallahassee, Florida.
Mr. J. C. Sullivan, Attorney at Law, Miami, Florida.
Mr. Guyte P. McCord, Attorney at Law, Tallahassee, Florida.
Waller & Pepper, Centennial Bldg., Tallahassee, Fla.
which is the usual and customary mailing address of the said attorney.

ROSE MEYERS.

Sworn to and subscribed before me this 8th day of November, A. D. 1935.

[SEAL] EDITH E. HOUSE.
Notary Public, State of Florida at Large.

My Commission Expires June 16, 1938.

639 In Supreme Court of Florida

LOUIS F. SNEDIGAR AND GEORGE J. BAYA, COPARTNERS DOING BUSINESS Under the Firm Name and Style of Snedigar & Baya, appellants

vs.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW Jersey Corporation, et al., appellees

Order granting further stay of mandate

November 14, 1935

This cause having come on to be heard this day upon the petition filed herein on behalf of Carl K. Withers, as Commissioner of Banking and Insurance of the State of New Jersey, appellee, for a further stay of mandate in this cause pending the filing in the Supreme Court of the United States of a petition for a writ of certiorari, and it appearing that all parties of record have been duly notified of said application, and the Court having considered said petition, it is, upon consideration,

Ordered that the issuance of the mandate herein be, and the same is hereby, further stayed for a period of time to and including the 18th day of December, A. D. 1935.

It is further ordered that in the event due proof of the filing in the Supreme Court of the United States of said petition or petitions for certiorari is filed with the clerk of this Court on or before the said 18th day of December, A. D. 1935, then the mandate herein shall be stayed until such time as the Supreme Court of the United States has made final disposition of this cause.

640 [Bond on stay for $1,000.00 approved November 12, 1935, omitted in printing.]

646 [Clerk's Certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1935

385 Supreme Court of the United States

Order allowing certiorari

Filed February 3, 1936

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1936

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 643

UNITED STATES OF AMERICA, PETITIONER

v.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO INSURANCE COMMISSIONER OF THE STATE OF FLORIDA, AND NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY, RESPONDENTS

STIPULATION

It having been discovered that an error appears in the record filed in this cause in that the order of October 27, 1934, from which the appeal was taken (Rec. 253–254), in the fifteenth (15th) line of the fourth (4th) paragraph of said order after the words "after the payment of all claims", and before the words "of the United States", the following words appeared in the original order: "herein and heretofore allowed to pay in full the claims", and said words are omitted in the printed copy of said order in the transcript of record filed in this cause. In order to correct the record, it is hereby stipulated by and between the Solicitor General of the United States, representing the United States, and C. L. Waller and Claude Pepper, of

52602—36

Counsel for the respondents, that the hereto attached copy of the order aforesaid, duly certified by Honorable Paul V. Lang, Clerk of the Circuit Court of Leon County, Florida, may be presented for filing with the Clerk of the Supreme Court of the United States for the purpose of correcting the record as aforesaid, and any right to object to the filing of said corrected copy of said order is hereby waived.

This the 29th day of February A. D. 1936.

STANLEY REED,
Solicitor General of the United States of America.

JAS. W. MORRIS,
Assistant Attorney General.
C. L. WALLER,
CLAUDE PEPPER,
Of Counsel for Respondents.

In the Circuit Court Second Judicial Circuit in and for Leon County, Florida. In Chancery

THE LONDON OPERATING COMPANY, A FLORIDA CORPORATION, COMPLAINANT

v.

NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, A NEW JERSEY CORPORATION, ET AL., DEFENDANTS

ORDER

This cause coming on this day to be heard upon the account of the Receiver and his report filed in

said cause, and on the application of the receiver for authority to sell the securities in his possession and to pay claims allowed and for the further order and direction of the court on the matters and things set up in said report, and it appearing to the court that the receiver has given due and proper notice of such hearing, and that attorneys representing the following parties were present at said hearing, to-wit: Attorneys for the Receiver in Florida, Attorney for the Commissioner of Banking & Insurance of New Jersey, Attorneys for the claimants, United States, N. R. Robinson, Snedigar & Baya, and State of Florida for the use of Dade County, and the court having heard the report and the argument of counsel for the various parties, is of the opinion and doth decree as follows:

1. That the account of the receiver filed herein is hereby approved.

2. That the Court having heretofore made an order for the sale of the securities received by the receiver herein from the Treasurer of the State of Florida, the said receiver pay the claims which have heretofore been proved and allowed as preferred and unpreferred claims payable out of the proceeds derived from the sale of the said securities deposited with the State Treasurer the following parties in the following amounts:

Claim no.		Amount
2.	Dade County, Harry Doyle	107.45
3.	Dade County, Chas. Baker	107.45
4.	Dade County, John Frank	107.45
5.	Dade County, John Frank	107.45
6.	Dade County, J. W. Williams	256.20
7.	Dade County, Marie J. Roberts	107.45
8.	Dade County, C. H. Henderson	256.20
9.	Dade County, S. L. Halstead	506.20
10.	Dade County, John Wilson	106.20
11.	Dade County, John Todd	2,507.20
12.	Dade County, F. L. Hoffman	507.45
13.	Dade County, Buck Finch	107.45
1.	Burbridge Realty Co.	900.00
34.	Jay-Thorpe, Inc.	762.13
40.	Hernando State Bank	1,000.00
41.	Paul D. McGarry & John C. Sullivan	15,000.00
43.	First State Bank, Eustis	1,500.00
44.	Barnett National Bank of Jacksonville	500.00
45.	E. W. Yandre	500.00
46.	Pearce Produce Co.	2,500.00
48.	London Operating Company	1,030.00
	Total	$28,476.28

3. That after the payment of the claims hereinabove and heretofore allowed as payable, together with the costs, charges and expenses of this receivership heretofore allowed, that the receiver do file with this court a statement of the net balance remaining in his hands as such receiver.

4. The question of what shall be done with the residue then remaining in the hands of the said receiver is reserved for the further order of the court and the relative rights of the United States and creditors whose claims are not secured by the special deposit or trust fund, as well as the claim of William H. Kelly, as Commissioner of Banking

and Insurance of New Jersey, for the payment to him of moneys alleged to have been expended by him in the interest of preservation of the assets of said surety company in the State of Florida, as well as the petition of the said William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, to receive the residue that will remain in the hands of the receiver after the payment of all claims hereinabove allowed, is reserved for further determination by this Court; since it appears that sufficient funds will remain in the hands of the said receiver after the payment of all claims herein and heretofore allowed to pay in full the claims of the United States as well as the claim of the said William H. Kelly for reimbursement, therefore, the payment of the claims herein and heretofore allowed will in no wise prejudice the United States, or the said William H. Kelly, nor the common creditors, to-wit: Snedigar & Baya, N. R. Robinson, and Joseph M. Schlesinger, on which claims decision is hereby reserved.

Adjudged, Ordered, and Decreed this 27th day of October, A. D. 1934.

J. B. JOHNSON,
Judge Circuit Court.

STATE OF FLORIDA,
County of Leon:

I, Paul V. Lang, Clerk of the Circuit Court, in and for the aforesaid County, do certify that, the

foregoing is a true and correct copy and a literal transcript of the record of an Order on the report of the Receiver in that certain cause wherein THE LONDON OPERATING COMPANY, a Florida corporation, is Complainant, and NEW JERSEY FIDELITY & PLATE GLASS INSURANCE COMPANY, a New Jersey Corporation, et al., are defendants, as the same appears of record in Chancery Order Book No. 11, at page 464 of the Public Records of said County.

Given under my hand and official seal at Tallahassee, Florida, this February 25th, 1936.

[SEAL] PAUL V. LANG, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1936

FILE COPY

No. 643

In the Supreme Court of the United States

OCTOBER TERM, 1935

UNITED STATES OF AMERICA, PETITIONER

v.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO INSURANCE COMMISSIONER OF THE STATE OF FLORIDA, AND NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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CITATIONS

Cases:

Beaston v. *Farmers' Bank*, 12 Pet. 102 — 8

Bramwell v. *U. S. Fidelity & Guaranty Company*, 267 U. S. 483 — 8

Clark v. *Williard*, 292 U. S. 112 — 8

Field v. *United States*, 9 Pet. 182 — 8

Lewis v. *United States*, 92 U. S. 618 — 8

Price v. *United States*, 269 U. S. 492 — 8

Spokane County v. *United States*, 279 U. S. 80 — 8

State v. *Thurston State Bank*, 121 Neb. 407 — 8

United States v. *Porter*, 24 F. (2d) 139 — 8

United States v. *Bliss*, 40 F. (2d) 935 — 8

United States v. *Oklahoma*, 261 U. S. 253 — 8

Statutes:

Revised Statutes, Sec. 3466 (31 U. S. C. 191) — 10

Compiled General Laws of Florida:

Sec. 6302 — 10

Sec. 6303 — 11

Laws of Florida, Ch. 16248, 1933 (Amending Sec. 6303, Com.-General Laws of Florida) — 11

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

W. V. KNOTT, AS STATE TREASURER AND EX OFFICIO Insurance Commissioner of the State of Florida, and New Jersey Fidelity and Plate Glass Insurance Company

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

The Solicitor General, on behalf of the petitioner, the United States of America, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in the above case on June 24, 1935.

OPINIONS BELOW

The orders of the Leon County Circuit Court (R. 198–200, 235–238, 253–254) are not reported. The opinion of the Supreme Court of the State of Florida (R. 347–356) is reported in 163 So. 64.

JURISDICTION

The judgment of the Supreme Court of Florida was entered June 24, 1935 (R. 357). Petitions for rehearing were denied on September 18, 1935 (R. 362). The jurisdiction of this Court is invoked under the provisions of Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra,* pp. 10–13.

QUESTION PRESENTED

Whether the United States, under Section 3466 of the Revised Statutes, is entitled to priority over state creditors in claims to funds deposited as one of the statutory requirements for doing business in Florida.

STATEMENT

The New Jersey Fidelity and Plate Glass Insurance Company was placed in the hands of the Commissioner of Banking and Insurance of the State of New Jersey for liquidation on May 28, 1932 (R. 11). It had deposited with the Treasurer of the State of Florida securities of a face value of $75,000.00 (R. 1) in accordance with Sections 6302–6303, Compiled General Laws, *infra,* pp. 10, 11.

William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, filed a bill of complaint on December 19, 1932, in the Circuit

Court of Leon County, Florida, to prevent these securities from being paid to any person without an order of the court (R. 1–3). As amended, the bill requested that certain priority claims of the United States be excepted from the requested injunction and restraining order (R. 4–6). A temporary restraining order was issued preventing the payment of any claims without an order of court, with the exception of seven claims of the United States (R. 6–8).

By an Act approved May 10, 1933 (Ch. 16248, Acts 1933), *infra*, p. 11, Section 6303, Compiled General Laws, was amended to provide for the chancery court taking charge of the assets of an insolvent surety company and distributing them, with priority to Florida creditors. On May 16, 1933, The London Operating Company, a Florida corporation, instituted suit for the relief provided by this Act (R. 9–12). On May 17, 1933, an order was filed appointing a receiver to take charge of the assets of New Jersey Fidelity and Plate Glass Insurance Company in Florida, and restraining all actions until further order of the Circuit Court of Leon County (R. 14–16). On May 25, 1933, the receivership proceeding was consolidated with that instituted by the New Jersey Commissioner (R. 18–19). The State Treasurer turned over to the receiver securities with a face value of $51,000.00, but retained in his possession bonds with a face value of $20,000.00 for payment of the afore-

mentioned judgment claim of the United States, presented in accordance with state law (R. 25–26). A rule was issued June 16, 1933, against the State Treasurer to show cause why the $20,000.00 should not be turned over to the receiver (R. 25–30).

A copy of the rule to show cause was served upon the United State Attorney for the Southern District of Florida, and he petitioned the United States District Court to enjoin the State Treasurer from turning over the securities he had set aside to pay the judgments of the United States. An injunction was issued which was dissolved on October 30, 1933, inasmuch as the court was of the opinion that the United States could file its claims in the receivership proceedings in Florida and have the merits of its claims adjudicated, with right of appeal to the Supreme Court of the United States (R. 163–164).

An order was entered in the state court on January 1, 1934 (R. 185), requiring the State Treasurer to turn over to the receiver the securities retained to pay the claims of the United States. The United States filed its claims in the Florida receivership proceedings on May 27, 1934 (R. 157–160, 165–166). On April 30, 1934, the Florida receiver filed an answer and motion to dismiss the several petitions and claims of the United States (R. 185–192).[1] The

[1] According to the dates given by the record, the answer was filed prior to the claims. One explanation appears to be the possibility that a formal filing of the claims had earlier been neglected.

Circuit Court of Leon County assumed jurisdiction over all parties and subject matter by order of May 16, 1934 (R. 194), and entered an order on May 28, 1934, denying the United States priority under Section 3466 of the Revised Statutes, holding that the securities deposited with the State Treasurer were for the protection of the State of Florida and its citizens and political subdivisions (R. 198–200). The receiver filed his report on June 14, 1934, and, in accordance with the court order, denied priority to the claims of the United States (R. 201, 204). The New Jersey Commissioner filed exceptions to other parts of the report of the receiver (R. 214) and also filed a petition on July 23, 1934, requesting that any surplus after paying Florida creditors be turned over to him (R. 218). On August 7, 1934, the court entered an order on the report of the receiver denying priority to the claims of the United States and reserving for future determination the question of whether the United States would be entitled to payment out of any surplus that might remain after payment of Florida creditors (R. 235–238).

A second report of the Florida receiver was filed on October 4, 1934, requesting a sale of all assets and a decree of distribution, with a further request that the court determine whether any surplus that might remain should be paid to the United States on account of its claims (R. 246, 248–249). The New Jersey Commissioner filed objections, on Octo-

ber 20, 1934, to the allowance of the claims of the United States in any surplus that might remain (R. 251): The court entered an order on October 27, 1934, authorizing the payment of those claims which were allowed as preferred and reserving for future determination the question of whether the claims of the United States should be paid out of any surplus (R. 253–254).

An order was entered permitting the United States to amend its claims (R. 298–302).

Both the United States (R. 303–304) and the New Jersey Commissioner (R. 279–280) appealed from the order of October 27, 1934. The Supreme Court of Florida rendered its opinion in which the court stated that claims or judgments recovered by the United States are not entitled to priority under U. S. C., Title 31, Sec. 191 (R. S. Sec. 3466), and that the Legislature of Florida is presumed to have enacted its protective legislation for the benefit of Florida creditors (R. 348, 355–356). The United States was denied any right to participate in the fund in question and the court stated that it was deemed sufficient in denial of the claim of the United States to point out that Congress has undertaken to prescribe special legislation for its own protection in the case of defaulted surety company bonds, by U. S. C., Title 6, Secs. 1–11 (R. 356).

The United States filed a petition for rehearing on July 23, 1935, which was denied on September 18, 1935 (R. 358, 362).

SPECIFICATION OF ERRORS TO BE URGED

The petitioner urges that the Supreme Court of Florida erred:

1. In denying the United States priority in the fund in question under Section 3466 of the Revised Statutes.

2. In denying the United States the right of participation in the fund on the ground that Congress has prescribed special legislation for its own protection in the case of defaulted surety company bonds by U. S. C., Title 6, Secs. 1–11.

3. In affirming (as modified) the decision of the Supreme Court of Leon County.

REASONS FOR GRANTING THE WRIT

1. The United States has been denied all right to participate in the fund,[2] and the decision of the

[2] The order of the Circuit Court of Leon County was modified to conform to the opinion. The opinion contains language, as to the possible claim of the United States in the residue after payment of Florida claims and transfer to the domiciliary liquidator, which is ambiguous (R. 356). It is, therefore, important that special note be made of its statement (R. 355–356) that:

"In this case the United States asserts *not only a right of participation in the security fund* of New Jersey Fidelity Plate Glass Insurance Co. on deposit with the State Treasurer under Section 6302 C. G. L., 4339 R. G. S., *but insists upon a priority of payment* of its claim out of such fund by reason of Sections 191 and 192, Title 31 U. S. C. A.

"We deem it a sufficient answer *in denial of the claim of the United States on the first proposition* to point out that by its own Acts of Congress the United States has undertaken to prescribe special legislation of its own choice for its own special protection in the case of defaulted surety company bonds, * * *"

Supreme Court of Florida is thus a final judgment or decree within the meaning of Section 237 of the Judicial Code. *Clark* v. *Williard,* 292 U. S. 112, 117–118.

2. The New Jersey Fidelity and Plate Glass Insurance Company is insolvent (R. 301–302), and Section 3466 of the Revised Statutes assures priority to the claims of the United States in all cases where a person indebted to the United States is insolvent. *Beaston* v. *Farmers' Bank,* 12 Pet. 102, 134; *Lewis* v. *United States,* 92 U. S. 618, 621; *Bramwell* v. *United States Fidelity and Guaranty Co.,* 269 U. S. 483; *Price* v. *United States,* 269 U. S. 492.

It is established that local laws of a State cannot create priority in favor of other creditors and so defeat the priority of the United States. *Field* v. *United States,* 9 Pet. 182, 201; *United States* v. *Oklahoma,* 261 U. S. 253, 260; *Spokane County* v. *United States,* 279 U. S. 80, 92–93; *United States* v. *Porter,* 24 F. (2d) 139, 143 (D. Id.); *United States* v. *Bliss,* 40 F. (2d) 935 (D. Neb.); *State* v. *Thurston Bank,* 121 Neb. 407, 417.

At the present time there are various funds, which have been deposited by surety companies in different States for the purpose of doing business within the State, in which the United States is claiming priority. In each instance the surety company is insolvent, and most of the companies have very few, if any, assets other than these state

deposits. The claims of the United States against these funds aggregate several millions of dollars, and are now being presented in a number of proceedings in the different States.

When the surety companies requested authority of the United States to write bonds in favor of the Government, it was reasonably represented that these state deposits were part of their assets. If a surety company is permitted to deposit the great bulk of its assets in the funds required by the various States, and if the United States is not entitled to participate in the state deposits, the priority established by Section 3466 will in effect have been destroyed in the surety business.

3. The only legislation that Congress has prescribed for the protection of claims of the United States against insolvent persons that are indebted to the United States appears to be Section 3466 of the Revised Statutes. The legislation collected in U. S. C., Title 6, Secs. 1–11 has no discernible application to this question.[3]

Wherefore, it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

DECEMBER 1935.

[3] The legislation relates to the custody and renewal of official bonds, examination of the surety on these bonds, eligibility of corporate sureties and quarterly statements of their condition, notice of delinquency of the principal, service of process, jurisdiction of suits on the bonds, and forfeiture of the surety's eligibility on nonpayment of a judgment.

APPENDIX

Section 3466 of the Revised Statutes of the United States (U. S. C., Title 31, Sec. 191):

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Section 6302, Compiled General Laws of Florida:

> *Requirements to do business in this State.*—Companies herein described, chartered by this State, or other States or foreign Governments, now doing business in this State, or hereafter doing business in this State, which offer or undertake to become surety upon any bond, or surety contract, before being accepted as surety thereon, shall be required to deposit with the Treasurer of this State bonds of the United States, or bonds of any State of the United States, and which amount according to their market value, to seventy-five thousand dollars which bonds shall be receipted for by the State Treasurer

and held or deposited by him. And whenever such company ceases to do business in this State, and has settled up all claims against it, as hereinafter provided, and has been released from all the bonds upon which they have been taken as sureties said bonds shall be delivered up to the proper party on presentation of the Treasurer's receipt for said bonds. While said bonds are so deposited with the Treasurer, the owner of the same shall be entitled to collect the interest on the same. For the bonds so deposited, the faith of the State is pledged that they shall be returned to the party or parties entitled to receive the same.

Section 6303, Compiled General Laws of Florida:

Final judgment against surety company.—Whenever final judgment has been rendered against any surety company on a fidelity or surety bond, said surety shall pay the same within thirty days. Upon notice of failure to pay said amount within said time, the State Treasurer shall retain said bonds, or so much thereof as may be necessary to cover said judgment and costs, subject to the order of the court trying any suit that may be brought upon such bond.

Chapter 16248, Laws of Florida, 1933:

SECTION 1. That Section 4340 of the Revised General Statutes of Florida of 1920, the same being Section 6303 of the Compiled General Laws of Florida 1927, be and the same is hereby amended to read as follows:

"6303 (4340) FINAL JUDGMENT AGAINST SURETY COMPANY.

"Whenever a final judgment has been rendered against any surety company on a fidelity, appearance, supersedeas or surety

bond, the surety on said bond shall pay the same within thirty days. Upon notice of failure to pay the amount due under said bond within said time, the State Treasurer shall retain the bonds or securities deposited with him by said surety company under Section 4339 of the Revised General Statutes of Florida of 1920, and acts amendatory thereof, or as much thereof as may be necessary to cover said judgment and costs, subject to the order of the Court trying any suit that may be brought upon said bond: Provided, however, that in the event of the adjudication of insolvency of any such surety company by a court of competent jurisdiction, or in the event its assets should be placed in liquidation in the State of its incorporation, the Court of Chancery, at the seat of Government in Florida shall have jurisdiction, upon bill filed by any party in interest, to take charge of the securities so deposited with the State Treasurer under the provisions of Section 4339 of the Revised General Statutes of Florida of 1920, and acts amendatory thereof, together with any other assets of such surety company, which may be marshaled in the State of Florida, to direct a sale of the said securities at public or private sale and on such terms as the said court deems proper and, after paying all costs and expenses, including reasonable counsel fees incurred in connection with said proceedings, all as allowed by the court, to distribute the proceeds of the sale of said securities proportionally among all of the Florida creditors who may make proof of their claims against any such surety company to the satisfaction of said court, the surplus, if any, to be disposed of by proper order of such court. The said court is em-

powered to ascertain, as far as practicable, the names and addresses of all Florida creditors and the amounts due and owing to them under bonds given by said surety company, and to notify the Florida creditors to make proof of their claims and to determine the validity and the amount due each of them. The claims of all Florida creditors of any such surety company not reduced to final judgment prior to the time the said Court of Chancery takes charge of such Florida assets shall participate in the proceeds of the sale of said securities and assets only on a proportional basis with other Florida creditors. Upon the said Court of Chancery assuming jurisdiction of the said securities and assets of such surety company, all actions against the said company and the said securities and assets shall be stayed, pending the further orders of said Court and the State Treasurer, and the State of Florida shall thereby be absolved from any further liability on account of said securities, and the right of said surety company to transact business in this State shall cease and determine.

"SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

"SECTION 3. This Act shall take effect upon becoming a law.

"Approved May 10, 1933."

U. S. GOVERNMENT PRINTING OFFICE: 1933

FILE COPY

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No. 643

In the Supreme Court of the United States

OCTOBER TERM, 1935

UNITED STATES OF AMERICA, PETITIONER

v.

W. V. KNOTT, STATE TREASURER AND EX OFFICIO INSURANCE COMMISSIONER OF THE STATE OF FLORIDA, AND NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The orders of the Leon County Circuit Court (R. 198–201, 235–239, 253–254) denying priority to the claims of the United States are not reported. The opinion of the Supreme Court of the State of Florida (R. 347–356) is reported in 163 So. 64.

JURISDICTION

The judgment of the Supreme Court of Florida was entered June 24, 1935 (R. 357). Petitions for rehearing were denied on September 18, 1935 (R. 362). The petition for a writ of certiorari was filed December 18, 1935, and was granted February 3, 1936. The jurisdiction of this Court rests upon the provisions of Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, pp. 32–35.

QUESTION PRESENTED

Whether the United States, under Section 3466 of the Revised Statutes, is entitled to priority over Florida creditors in claims to funds deposited with the Treasurer of the State of Florida, as one of the statutory requirements for doing business in Florida, by a New Jersey surety company which thereafter became insolvent and whose assets were transferred for purposes of liquidation.

STATEMENT

The New Jersey Fidelity and Plate Glass Insurance Company, a New Jersey corporation (hereinafter referred to as the Surety Company), became insolvent, and was placed in the hands of the Commissioner of Banking and Insurance of that State for liquidation on May 28, 1932 (R. 11, 20; 300–302). It had theretofore deposited with the Treas-

urer of the State of Florida securities of a face value of $75,000 (R. 1, 8–9) in accordance with Sections 6302–6303 of the Compiled General Laws of Florida, *infra*, pp. 32–33.

On December 19, 1932, William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, filed a bill of complaint in the Circuit Court of Leon County, Florida, to prevent the Treasurer of the State of Florida from paying out these securities to any person without an order of the court (R. 1–3). As amended, the bill requested that certain listed claims (including seven judgment claims of the United States) be excepted from the requested injunction and restraining order (R. 4–6). A temporary restraining order [1] was issued preventing the payment, without an order of court, of any claims by the State Treasurer, with the exception of the listed claims (R. 6–8).

Between September 15, 1932, and April 18, 1933, the United States obtained twenty judgments totaling $14,075 in the United States District Court for the Southern District of Florida based upon estreated bail bonds executed in that court (R. 157–166; 292–297). In the case of all but five of these judgments the bonds became estreated prior to May 18, 1932, the date of the insolvency of the Surety Company and all of the judgments had been entered

[1] Except when otherwise stated, all orders referred to in the statement of the case were entered by the Circuit Court of Leon County, Florida, and all court proceedings referred to were in that court.

prior to the appointment of the receiver in this cause (Ibid.). Notice of all but one of these judgments was filed with the State Treasurer, pursuant to Section 6303 of the Compiled General Laws, prior to the May 10, 1933, amendment thereof (Ibid.).

By the Act of May 10, 1933 (C. 16248, Acts 1933), *infra*, p. 34, Section 6303, Compiled General Laws, was amended to provide that the chancery court should, upon a bill filed by any party in interest, take charge of the securities deposited by any insolvent surety company and distribute the proceeds thereof among Florida creditors who prove their claims. On May 16, 1933, The London Operating Company, a Florida corporation, instituted suit for the relief provided by this Act (R. 9–12). On May 17, 1933, an order was filed appointing a receiver to take charge of the assets of the Surety Company in Florida, and restraining all actions against it until further order of the court (R. 14–16). On May 25, 1933, the receivership proceeding was consolidated with the suit instituted by the New Jersey Commissioner (R. 18–19).

On June 16, 1933, a rule was issued against the State Treasurer requiring him to show cause why he should not turn over to the receiver, in addition to bonds of the Surety Company already delivered, $20,000 worth of bonds alleged to be held by him to pay judgments and claims filed with him (R. 27–30). On October 30, 1933, the United States District Court for the Southern District of Florida

dissolved an order theretofore issued by it directing the Treasurer to hold certain bonds until further order (R. 163–164). The dissolution was predicated upon principles of comity and power of this court to review decisions of state courts (R. 164). On January 1, 1934, the Treasurer was ordered to turn over to the receiver the remaining securities of the Surety Company (R. 185). The receiver holds no assets other than the proceeds (including interest payments) of the deposited securities (R. 185, 187; 250–251).

On May 27, 1934, the United States filed its claims, based upon the twenty judgments described above, asserting preference by reason of R. S., Section 3466 (R. 157–166; 292–302). An order of May 28, 1934, denied the receiver's motion (R. 185–192) to dismiss these claims but also denied the motion of the United States (R. 195–197) to strike certain portions of the receiver's answer to its claims (R. 198–201). The court ruled in this order that though the claims of the United States were valid claims within the intendment of R. S., Section 3466, they were subordinate to the claims of residents of Florida holding obligations arising out of surety bonds or contracts (Ibid.). Pursuant to this order the receiver in his report of June 14, 1934, subordinated the claims of the United States to those of Florida creditors holding surety obligations (R. 201–211). Following hearings on exceptions to this report, the court on August 7, 1934, allowed various preferred and general claims against the

deposited securities, expressly ruling that the claims of the United States were not payable out of the deposit and reserving decision as to whether or not they were payable out of any surplus that might remain (R. 235–239).

On October 4, 1934, the receiver filed a report in the nature of an accounting and requested the court to adjudicate undisposed of claims, direct payment of claims allowed and of the expenses of the receivership, and determine whether any surplus should be remitted to the New Jersey Commissioner or first subjected to the claims of the United States (R. 246–251). This report showed that the receiver held bonds of a face value and cash derived from bonds in the total amount of $71,968.27, against which there were claims theretofore allowed and estimated receivership expenses of $33,476.28 and undisposed of claims of $35,149.92 (Ibid.). In addition the report described appeals pending in the Supreme Court of Florida for claims theretofore disallowed, which totaled $3,500 (Ibid.).

The New Jersey Commissioner on October 20, 1934, repeated his assertion of July 23, 1934 (R. 218–219) that any surplus remaining after payment of the claims of residents of Florida should be turned over to him (R. 251).

An order of October 20, 1934, directed sale of the bonds (R. 252), and on October 27, 1934, the receiver's report of October 4, 1934, was approved and payment of allowed claims totaling $28,476.28 was directed (R. 253–254). The right of the United

States to receive payment out of the residue, the New Jersey Commissioner's claim to the residue, and various other claims were to receive further consideration (Ibid.).

From this order the New Jersey Commissioner appealed to the Supreme Court of Florida (R. 349; 279–281), and the United States filed cross-assignments of error (R. 356; 303–304). The order was affirmed on June 24, 1935, by the Supreme Court of Florida (R. 347–357).[2] The denial of the claim of the United States to priority was based upon the Supreme Court of Florida's determination that Sections 6302 and 6303 of the Compiled General Laws at the time of the deposit in question, and hence long prior to the amendatory Act of May 10, 1933, created a fund in the nature of a trust fund for Florida creditors and were not designed to create any special protection for the United States (R. 352–356). The petition of the United States for rehearing (R. 358–359) was denied by the Supreme Court of Florida on September 18, 1935 (R. 362).

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[2] The concluding paragraph of the opinion of the Supreme Court of Florida (R. 356) and the judgment entered by that court (R. 357) affirmed the decision below as "modified to conform" to the opinion rendered. The opinion expressly denied the right of the United States to *participate* in the funds derived from the deposited securities (R. 355-356). As stated *infra*, pp. 11–13, the United States, for these and other reasons, believes that not only was the claim for priority denied but that all right to payment out of the deposited securities in the Florida courts was also denied.

SPECIFICATION OF ERRORS

The petitioner urges that the Supreme Court of Florida erred:

1. In denying the United States priority in the fund in question under Section 3466 of the Revised Statutes.

2. In denying the United States the right of participation in the fund on the ground that Congress has prescribed special legislation for its own protection in the case of defaulted surety company bonds by United States Code, Title 6, Secs. 1–11.

3. In affirming (as modified) the decision of the Circuit Court of Leon County. . .

SUMMARY OF ARGUMENT

I

The judgment of the Supreme Court of Florida was a final order within the principles governing the review by this Court of the decisions of courts of the States. In denying the claims of the United States to priority under Section 3466, Revised Statutes, the Supreme Court of Florida not only affirmed an order for the distribution of a part of the fund in question among claimants adverse to the United States, but denied the United States any right to participate in any part of the fund while in the hands of the Florida receiver.

Thus the decision below leaves nothing more to be decided with respect to the United States. Furthermore, that part of the decision which affirmed the order of distribution, considered alone,

was final inasmuch as its execution would irretrievably dispose of claims of the United States to these funds.

The decision of the Supreme Court of Florida is adverse to the rights of the United States since it remits the United States to its remedy in the domiciliary proceedings where it seems improbable that the United States will receive payment in full; and that part of the decision which ordered a partial distribution is also adverse to the United States in that it does not appear certain that the residue of the funds will be sufficient to satisfy the claims of the United States in full.

II

The Florida statutes relating to the distribution of the deposited securities here involved did not confer upon Florida claimants such interests as will supersede the rights of the United States, under Section 3466, Revised Statutes, to priority of payment. The surety company was insolvent within the intendment of the statute, and all its property had been transferred to others to be applied in payment of its indebtedness. The effect of the decision of the Florida court is to construe the priority of the United States as applying only to assets remitted to the domiciliary liquidator. This would permit, contrary to established principles, the States to defeat the priority of the Federal Government, since a State may properly permit the application of assets within its jurisdiction to the satis-

faction of local claims prior to any remission of such assets to the domiciliary liquidator.

Even if the deposited securities had been subject to perfected specific liens superior to the claims of the United States, the latter would be entitled to priority in payment of its claims out of the remaining assets. Such remaining assets fall within the plain terms of the statute. The priority here asserted is in no way in conflict with cases holding administration expenses superior to claims of the United States.

ARGUMENT

I

THE JUDGMENT OF THE SUPREME COURT OF FLORIDA CONSTITUTED A FINAL JUDGMENT AND WAS PREJUDICIAL TO THE RIGHTS OF THE UNITED STATES

1. THE JUDGMENT BELOW WAS FINAL

The receiver, hereinafter referred to as respondent, contends (Br. in Opp. 8–9) that the order of October 27, 1934, which was appealed to the Supreme Court of Florida, was not a final order, and that the order of May 28, 1934, which denied the United States priority over local claimants, constituted the final order in the case which determined and disposed of the rights which the United States is here asserting. This contention, we believe, is not now available to respondent, and is not relevant to the issues here raised.

The respondent does not contend that because all claims have not yet been disposed of no judgment in this case can be regarded as final within the meaning of the principles applicable to review by this Court. Indeed, as stated above, the respondent contends that the order of May 28, 1934, was final, and apparently urges either that the United States has waived its right to appeal or that the United States appealed to the Supreme Court of Florida from the wrong order. These are obviously matters of Florida law, to which the rules affecting the jurisdiction of this Court are not applicable, and have, in effect, been decided adversely to respondent by the very decision here involved.[3] Lastly, the finality of orders of the Circuit Court of Leon County is not relevant to the issues before this Court—the judgment under review is a judgment of the Supreme Court of Florida, not an order of the Circuit Court.

We submit that for the purpose of review by this Court, the finality of the judgment of the Supreme Court of Florida is not open to serious question. The Supreme Court of Florida has affirmed an

[3] It may further be noted that respondent's contentions, which so far as appears from the record were not raised in an appropriate manner in the proceedings below, are apparently without merit under Florida law. Not only may appeals be postponed "until the end of the cause" involved (Comp. Gen. Laws, 1927, sec. 4961), but it is the order of sale and distribution which is considered final, not a prior decree which fixes the rights of the parties. *Banks* v. *Guinyard*, 63 Fla. 334.

order for the distribution of the fund in question to the extent needed to satisfy the allowed claims of various Florida creditors, and, we contend, has further ruled that the United States is not entitled to participate in the fund even after satisfaction of Florida claimants.

The Supreme Court of Florida stated (R. 355–356) that "the United States asserts *not only a right of participation* in the security fund * * *, but insists upon a priority of payment of its claim out of such fund * * *." (Italics added.) The court expressly denied "the claim of the United States on the first proposition" (R. 356), and in so doing relied upon its construction of the Florida statutes as not "conferring statutory benefits with reference to surety bonds executed in Florida running to the United States" (Ibid.). No specific discussion appears in the opinion as to the second proposition, namely, that of the priority of the United States. From this it is apparent that the court considered that so far as the United States was concerned there was no local policy requiring the treatment of these funds as other than general assets to be "turned over to the domiciliary liquidator * * *, after the satisfaction thereout of Florida claims," and that Section 3466, Revised Statutes, applies only to general assets in the hands of the domiciliary liquidator. We submit that accordingly the decision must be regarded as remitting the

United States to its right to submit the claims in the New Jersey liquidation proceedings.[4]

This denial of any right to participation in the funds held by the Florida receiver constituted a final judgment. *Ex parte Tiffany,* 252 U. S. 32, 36; *Gumbel* v. *Pitkin,* 113 U. S. 545, 548; *Savannah* v. *Jessup,* 106 U. S. 563, 564–565; *United States* v. *River Rouge Improvement Co.,* 269 U. S. 411, 413–414. The claim of the United States "has been finally disposed of, and no longer is a pending proceeding." *Clark* v. *Williard,* 292 U. S. 112, 118–119.

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[4] This is further borne out by the express *modification*, in both the opinion and the judgment here under review, of the decree of the Circuit Court "to conform to the holding" of the opinion (R. 356–357). The sole appellants in this proceeding were the United States and the domiciliary liquidator. The domiciliary liquidator objected to the allowance of claims other than those of judgment creditors and claimed the right to any residue as general assets (R. 279–281). Modification of that part of the order of the Circuit Court which disallowed claims of those non-judgment creditors whose claims did not arise out of surety bonds was not urged by either appellant, and was accomplished in express terms in a separate opinion and judgment entered upon a totally distinct appeal by a non-surety bond creditor (R. 370–371). The affirmance of the allowance of the claims of non-judgment creditors whose claims did arise out of surety bonds required no modification. The only meaning which can reasonably be ascribed to the modification required by the judgment here involved is that it related to the reserving of decision by the Circuit Court as to the disposition of any surplus and was adverse to the United States.

And even if this Court considers that the Supreme Court of Florida did not modify the Circuit Court's ruling reserving consideration of the rights of the United States in the residue, that part of the judgment which denied priority to the United States as against the Florida creditors whose claims had been allowed, and which directed distribution to such creditors, is in itself final for purposes of review. If review of this decision of the Supreme Court of Florida could not be had by the United States, its claim to priority in the sums disbursed would be irretrievably lost as a practical matter and the issue would become moot as a matter of law. Such practical finality as to specific property and as to specific issues has been expressly held to constitute finality within the rule here considered, even where additional property and independent additional issues are undisposed of as between the very parties affected by the judgment. *Carondelet Canal Company* v. *Louisiana,* 233 U. S. 362. In the instant case, no such remaining issues exist. The ruling of the Circuit Court reserving decision as to whether the United States should be entitled to payment out of such residue as might remain after payment of the Florida creditors presents at most issues affecting the United States which are alternative to and in substitution of the issue here raised. If review is not now granted no decision upon those issues will be made until after possibility of review of the United States' claim to priority

as against Florida creditors has ceased; indeed, no ruling on that matter is possible except as a consequence of a decision adverse to the United States on the question of priority. Neither in form nor in effect does the judgment of the Supreme Court of Florida require further proceedings on this issue, as did the judgments considered in *Bostwick* v. *Brinkerhoff*, 106 U. S. 3; *Haseltine* v. *Central Bank*, 183 U. S. 130; *Louisiana Navigation Co.* v. *Oyster Commission*, 226 U. S. 99, and similar cases. If this Court should affirm the decision, "the court below would have nothing to do but to execute the judgment * * * already rendered." *Bostwick* v. *Brinkerhoff*, *supra*, at pp. 3–4; *Georgia Ry. Co.* v. *Decatur*, 262 U. S. 432, 437.[5]

[5] Statements to the effect that "this court may not be called upon to review by piecemeal the action of a state court" (*Louisiana Nav. Co.* v. *Oyster Comm.* 226 U. S. 99, 101), or that "to be reviewable a judgment or decree must be not only final, but complete, that is, final not only as to all the parties, but as to the whole subject matter and as to all the causes of action involved" (*Arnold* v. *Guimarin & Co.*, 263 U. S. 427, 434), are not inconsistent with the above decisions as applied to the present case. See *Carondelet Canal Co.* v. *Louisiana*, 233 U. S. 362, 372–373. The statement in the *Louisiana Nav. Co.* case, made with reference to an order which on its face was not final, was not based upon a construction of the statutory authority of this Court. Furthermore, the opinion stresses the fact that in that case the right of review would not be lost by the dismissal (pp. 101–102). Similarly the basis of the decision in the *Arnold* case is that no action had been taken below which irretrievably fixed the amounts due any claimant (pp. 432–433).

2. THE JUDGMENT WAS PREJUDICIAL TO THE RIGHTS OF THE UNITED STATES

The respondent also contends (Br. in Opp. 10) that the United States was not adversely affected by the order of October 27, 1934, from which it appealed. Here again respondent seeks to raise in this court questions of state law already decided adversely to him by the decision of the Supreme Court of Florida in this case. Nor is there merit in the contention that the judgment of the Supreme Court of Florida was not adverse to the United States.

If, as we contend, the United States has been denied participation in any funds resulting from the sale of the deposited securities, it appears from the record that it is improbable that the United States will receive payment in full in the New Jersey liquidation proceedings (R. 298, 309, 310, 316). Clearly it can not be said that the ruling below could not have prejudiced the rights of the United States. Cf. *Boston and Albany Railroad Co.* v. *O'Reilly,* 158 U. S. 334, 337; *Vicksburg & Meridian Railroad* v. *O'Brien,* 119 U. S. 99, 103.

Similarly, even if this Court should determine that the judgment here challenged did not pass upon the right of the United States to payment from the fund out of any residue that may remain after satisfaction of the Florida creditors, that part of the judgment which affirmed the order of distribution to pay allowed Florida claims was preju-

dicial to the rights of the United States. The right of the United States to payment out of general assets found in a State not the domicile of the insolvent, where the public policy of such State provides for delivery of such assets to the domiciliary liquidator, has, so far as we are aware, never been passed upon by this Court. Assuming the correctness of the principle announced by various of the inferior Federal courts[6] that claims of the United States do not precede expenses of administration, it may well be that the United States has no right to satisfaction out of such general assets prior to receipt thereof by the domiciliary liquidator. Consequently, the right of the United States to satisfaction out of the residue of the proceeds of the deposited securities may turn upon the doubtful question of whether or not such residue is to be regarded as general assets. Erroneous remission to litigation, the outcome of which is unpredictable, is not harmless error. Cf. *Ashwander* v. *Tennessee Valley Authority,* Nos. 403 and 404 of the present term.

Furthermore, despite the ruling of the Circuit Court to the effect that sufficient funds to pay in

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[6] *Kennebec Box Co., Inc.*, v. *O. S. Richards Corp.*, 5 F. (2d) 951 (C. C. A., 2d); *In re Holmes Mfg. Co.*, 19 F. (2d) 239, 241–242 (D. Conn.); *Piedmont Corp.* v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525, 528–529 (N. D. Ga.), and see *Wire Wheel Corp.* v. *Fayette Bank & Trust Co.*, 30 F. (2d) 318, 320 (C. C. A., 7th), certiorari denied, 279 U. S. 873, in which the point was decided without discussion. Cf. *In re Jacobson*, 263 F. 883, 885 (C. C. A. 7th).

full the claims of the United States would remain after payment of all Florida creditors,[7] it can not be said that even if the right of the United States to the residue be assumed the record discloses "beyond doubt, that the error complained of did not and could not have prejudiced the rights" of the United States. Cf. *Vicksburg & Meridian Railroad* v. *O'Brien, supra,* at p. 103.

The accounting contained in the receiver's report of October 4, 1934, to which respondent refers (Br. in Opp. 10), discloses assets of $71,968.27, of which $1,193.92 represented general assets of the Surety Company[8] and of which $71,000 represented the par value of the securities (less allocable expenses already incurred and chargeable to the securities) (R. 251). The order affirmed by the Supreme Court of Florida directed the distribution, out of the proceeds of the securities, of claims totaling $28,476.28 (R. 253), plus expenses of the receivership previously allowed (R. 254). These expenses are not set forth in the order, but the report which it approved *estimated* receivership expenses at $3,000 (R. 247). This report further disclosed pending undisposed of

[7] R. 254, as amended by stipulation filed in this Court.

[8] This sum represents interest on the securities received by the State Treasurer prior to the appointment of the Florida receiver (R. 246, 250) and is not here involved since the United States has made no claim to any general assets within the State of Florida.

claims, exclusive of those of the United States, totaling $21,074.92, and additional disallowed claims pending on appeal totaling $3,500 (R. 248). All of the undisposed of and appealed claims are of such a nature that if the judgment below be sustained, they would, if proved, be legally entitled to take precedence over the claims of the United States. Indeed, the record discloses that at least one of these claims has been so preferred since the order of the Circuit Court.[9]

After deduction of the various amounts listed above, the receiver's accounts as of October 4, 1934, show an *estimated* $14,723.75 residue. The claims of the United States total $14,075 (R. 237–8; 248). The estimated surplus is based upon two assumptions: (1) valuing the securities at par (R. 251); and (2) limiting the total expenses of the receivership, from October 4, 1934, until the final disposition of the funds involved, to an estimated $3,000 (R. 247). The record does not disclose whether the securities have actually been converted into cash, although an order of sale at a price in excess

[9] The receiver's report (R. 248) listed claims of Snedigar & Baya as undisposed of and the order of October 27, 1934, expressly confirmed this (R. 254). The separate appeal of these claimants resulted in a modification of the order so as to allow these claims on the authority of the opinion here involved (R. 370–371). This ruling would also remove the only legal reasons upon which other undisposed of claims had been denied preferential status equal to that of the claims of other Florida creditors (R. 206–207; 208).

of par was entered (R. 252). The mere fact of the extension of the receivership proceedings to this date warrants the inference that the final expenses may well exceed the modest estimate of $3,000. Thus the record fails to establish that the decision of the Florida Supreme Court does not adversely affect the United States.[10]

II

By Virtue of Section 3466 of the Revised Statutes, the United States Was Entitled to Priority in Payment of Its Claims Over All Creditors, Domestic or Otherwise, Out of the Securities Deposited With the State Treasurer of Florida.

Section 3466 of the Revised Statutes, *infra*, p. 32, as construed by this Court, establishes that when any person indebted to the United States is insolvent and when the possession and control of such person's estate has been given to any other person charged with the duty of applying it to the payment of the debts of the insolvent, the indebtedness due the United States is required first to be satisfied. *Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483, 490.

There can be no doubt of the applicability of the statute to the debts here due the United States.

[10] This conclusion is not affected by the fact that the United States has also filed its claims in New Jersey with the domiciliary liquidator (R. 298). The amount, if any, which the United States might recover there if its claims should not be satisfied in full in the Florida receivership, is plainly conjectural so far as the record discloses (R. 298, 309; 310, 316).

See *Bramwell* v. *U. S. Fidelity & Guaranty Co., supra,* pp. 487–488; *Price* v. *United States,* 269 U. S. 492, 499–500. Cf. *Pierce* v. *United States,* 255 U. S. 398, 401–402. In *Beaston* v. *Farmers' Bank,* 12 Pet. 102, 134, this Court, referring to the provision from which the present statute was derived, established the generality of the indebtedness covered:

> All debtors to the United States, whatever their character, and by whatever mode bound, may be fairly included within the language used * * *. It, therefore, lies upon those who claim exemption from the operation of the statute, to show that they are not within its provisions. * * * As this statute has reference to the public good, it ought to be liberally construed. * * *

As this Court has more recently said, "There exists [sic] now the same reasons for a liberal construction of the priority act as when the rule was laid down." *Bramwell* v. *U. S. Fidelity & Guaranty Co., supra,* p. 487. The purpose of the statute "is not to be defeated by unnecessarily restricting the application of the word 'debts' within a narrow or technical meaning." *Price* v. *United States, supra,* p. 500.[11] See also *United States* v. *Fisher,* 2 Cranch. 358, 386, 395.

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[11] The record discloses that five of the twenty judgments upon which the claims of the United States are based, were entered on bail bonds which were estreated after May 28, 1932, the date of the general assignment of the Surety Com-

The Surety Company was plainly insolvent within the intendment of the statute, namely, it did not have sufficient property to pay all its debts (*United States* v. *Oklahoma*, 261 U. S. 253, 260) and it had manifested its insolvency by voluntarily turning all of its property over to the Superintendent of Banking and Insurance for the state of its domicile for the purpose of having him apply its assets to the payment of its indebtedness (R. 11, 20, 300–302, 308–310, 345–347). *Bramwell* v. *United States Fidelity & Guaranty Co.*, *supra*, pp. 488–490; *Price* v. *United States*, 269 U. S. 492, 502; *United States* v. *Butterworth-Judson Corporation*, 269 U. S. 504, 513–514.

The respondent contends (Br. in Opp. 13) that it does not appear that all of the assets of the Surety Company were in the hands of the Florida receiver. Since an ancillary receiver holds only the assets within the state of his appointment, respond-

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pany. (Claims 15, 17, 18, 19, and 32. R. 293–294 and 297.) Whether the condition of these bonds had been violated at this time does not appear. Since the rights of Florida creditors were not enlarged at any time prior to the appointment of the Florida receiver (*infra*, pp. 25–27), and since by that date all of the United States' claims had been reduced to judgment (R. 157, 293–297), the exact date of the accrual of the claims of the United States is not here material. It may be noted further that during the course of the proceedings the Circuit Judge ruled specifically that the Government's claims were within the priority statute (R. 200).

ent's contention, so far as relevant to the issues here presented, in effect is that the statute does not apply—except in the theoretically possible case of a corporation having all of its assets in a foreign jurisdiction—to ancillary proceedings. We submit that respondent's construction is unsound.

Section 3466 of the Revised Statutes must be read in connection with its companion statute, Section 3467, *infra*, p. 32. Cf. *Bramwell* v. *U. S. Fidelity & Guaranty Co.*, 269 U. S. 483, 490. The latter provision makes any "person, who pays * * * any debt due by the person or estate from whom or for which he acts before he satisfies and pays the debt due to the United States from such person or estate", personally answerable to the United States. Unquestionably the Florida receiver acts for an estate of a debtor of the United States. That debtor's assets are insufficient to pay all its debts, and its insolvency has been manifested by the transfer of possession and control of all its assets to two or more persons charged with the duty of applying, pursuant to applicable law, the particular assets held by them, respectively, to the payment of the debtor's obligations. To construe the priority of the United States as not applying in such a case until after the remission of assets to the domiciliary liquidator would, contrary to long established principles (see *Field* v. *United States*, 9 Pet. 182, 201), result in permitting the States to defeat the priority of the Federal Government and make the statute

patently defective to accomplish the purpose contemplated. Such a construction would permit a State in which were located the chief assets of a Delaware corporation (such was the situation in *Equitable Trust Co.* v. *Connecticut Brass & Mfg. Co.*, 290 F. 712 (C. C. A. 2d)) to prefer its local creditors under the power recognized in *Clark* v. *Williard*, 294 U. S. 211, in derogation of the priority of the United States.[12]

Thus the sole issue presented is whether the particular property of the debtor here involved—the deposited securities or their proceeds—is exempted from the rule of preference created in general

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[12] We are not aware of any decision of the Federal courts upon this question. The cases cited by respondent (Br. in Opp. 13) merely state the established doctrine that unless all of the assets of the debtor have been transferred at least one of the necessary indicia of insolvency is lacking. *United States* v. *Hooe*, 3 Cranch 73, 91. The case of *Equitable Trust Co. of New York* v. *Conn. Brass & Mfg. Corp.*, 290 Fed. 712 (C. C. A. (2d)), referred to by respondent, involved claims presented by the United States by intervention in an ancillary receivership. The decision, however, was rested upon the fact that the receiver was appointed to conduct the debtor's business and not to liquidate its assets in order to pay its debts (pp. 714, 715). Cf. *United States* v. *Oklahoma*, 261 U. S. 253. There was consequently no need to pass upon the question of whether in a case otherwise within the statute the United States might under the statute claim priority in the ancillary proceedings. The court indicated, however, that if there had been such a transfer of the debtor's assets as to be within the statute, the United States would have been so entitled—"the government might have appeared before a master on reference and proved its claim * * *" (p. 715).

terms by the statute. We submit that the decisions of this Court establish that no such exemption is applicable.

The Government does not here question the power of the State of Florida, as against the domiciliary liquidator, to subject the securities to seizure and sale under the process of its courts and to distribution among local creditors.[13] *Clark* v. *Williard,* 294 U. S. 211, 213–215. For the purposes of the instant case this power is specifically established by the denial of the domiciliary liquidator's petitions for certiorari in two cases arising out of the proceedings here involved. *Withers* v. *Knott,* No. 644 of the present term, and *Withers* v. *Snedigar,* No. 645 of the present term, certiorari denied February 3, 1936. The Government contends simply that its statutory right of priority is not defeated by this exercise by the State of Florida of its sovereign powers.

It is not material in this case to determine whether the priority of the United States with respect to the deposited securities attached upon the

[13]As in the case of *Clark* v. *Williard*, 294 U. S. 211, 216, no point was made below as to the situs of the securities involved. Furthermore, it would appear that under the construction of the Florida statutes adopted by the Supreme Court of Florida, the Surety Company in depositing the securities had voluntarily placed them within the jurisdiction of the Florida courts. The record discloses proper service of process upon the Surety Company (R. 20) and the domiciliary liquidator was a party to the proceedings below (R. 1–3, 18–19). See *Clark* v. *Williard*, 292 U. S. 112, 119–20.

taking over of the Surety Company by the New Jersey liquidator or upon the appointment of the Florida receiver, since under Florida law, as appears hereafter, no changes occurred in the rights of Florida creditors between those dates. For the purposes of this argument it is assumed that the priority arose at least as early as the appointment of the Florida receiver and that the extent of the preference of the United States is to be determined by the rights existing on that date. See *United States* v. *Oklahoma,* 261 U. S. 253, 260. Nothing Florida might do thereafter could impair or supersede that priority (Ibid.).

Up to that time the deposited securities had clearly remained the property of the Surety Company or its successor. The Florida statutes speak of the depositing company as the "owner" of the securities and specifically provide that the depositing company shall be entitled to collect interest on the securities while they remain on deposit (Sec. 6302, *infra,* p. 32). These securities, according to the decision of the Supreme Court of Florida, were subject to attachment in favor of judgment creditors until insolvency and upon insolvency were to be distributed, in a special chancery proceeding, among all Florida claimants (Opin., R. 348 at 354–355).

We submit that upon the insolvency of the Surety Company and the assumption of control of the deposited securities by the Florida receiver, no rights had been created in favor of any Florida creditor that would defeat the priority given to the

United States by Section 3466, Revised Statutes. At that time the Florida claimants entitled to satisfaction out of the fund were unascertained. Their ascertainment depended upon the filing of a bill by some "party in interest" requesting the aid of a chancery court, upon the consequent ascertainment, "as far as practicable, [of] the names and addresses of all Florida creditors and the amounts due and owing to them under bonds given by said surety company", upon the proof of such claims, and upon a distribution of the fund "proportionately" among such claimants by the court.

In *Spokane* v. *United States,* 279 U. S. 80, this Court held that debts due the United States took precedence over personal property taxes assessed prior to the application of Federal priority (p. 93) and collectible out of the taxed property or, if that property had been disposed of, as a lien upon all the real and personal property of the taxpayer by seizure, distraint, or other specific proceedings (pp. 93–94). The priority was sustained because no distraint or similar proceeding had been begun at the time the priority arose and hence the liens "were not specific" (p. 94).

In the instant case no Florida creditor had even such an interest in the deposited securities as might thereafter ripen into a specific lien upon specific property. The priority of the United States appears to follow *a fortiori* from the *Spokane County* decision.

Other decisions fortify this conclusion. In *New York* v. *Maclay*, 288 U. S. 290, claims of the United States were held to take precedence over unliquidated taxes due the State of New York, although payment of the taxes was under New York law secured by a lien which bound the taxpayer's property even in the hands of *bona fide* purchasers or encumbrancers who took before assessment (p. 292). This Court said:

> To hold that a lien has progressed to such a point as to be a warning to mortgagees and purchasers of a contingent liability, like a notice of *lis pendens*, is far from holding that while the liability is unliquidated and unknown the lien thus created is perfect and specific. By the terms of the hypothesis it is nothing of the kind. If the state were to stand upon the warning and omit to ascertain the debt, it would never be able to sell anything, for it would not know how much to sell. Against mortgagees and purchasers a lien perfected afterwards may take effect by relation as of the date of the inchoate lien through which mortgagees and purchasers become chargeable with notice. The doctrine of relation will not divest the United States of the preference that accrued when receivers were appointed * * * (p. 293).
>
> * * * the statutory preference must prevail against the lien of a tax not presently enforcible, but serving merely as a *caveat* of a more perfect lien to come (p. 294).

In the instant case there had been no final liquidation of the amounts of the respective claims of Florida creditors, for all creditors, whether holders of judgments or general claimants, had to prove their claims prior to participation. In addition the Florida creditors had no interests in any particular property, much less interests which like those of the State of New York in the *Maclay* case would bind the property in the hands of third persons. . It seems plain that their claims cannot supersede those of the United States. Compare also *Thelusson* v. *Smith,* 2 Wheat. 396, 425–426, discussed in *New York* v. *Maclay, supra,* pp. 293–294, in which priority was sustained against the lien of a judgment under which execution had not issued when the priority attached.

In short, Florida creditors had no specific or perfected interests in the deposited securities and their rights were liens, if at all, only in the broad sense of preferred claims. Cf. *Marshall* v. *New York,* 254 U. S. 380, 386. The laws of Florida simply set up a method for the administration or distribution of these particular assets, with specified preference in favor of designated classes of local creditors. It is submitted that these preferences do not take precedence over the claims of the Federal Government, for, as demonstrated above, Florida may not "create a priority in favor of other creditors, in cases of insolvency, which should supersede that of the United States." See *Field* v. *United States,* 9 Pet. 182, 201. Cf. *United States* v. *Fisher,* 2 Cranch. 358, 396–397.

Finally, the Government contends that if the deposited securities had been subjected to perfected specific liens, sufficiently similar to a divestment of the ownership of the Surety Company to prevail against the priority statute (see *New York* v. *Maclay*, 288 U. S. 290, 293–294), the United States would be entitled to payment of its claims out of so much of the proceeds as might remain after satisfaction of such liens. Section 3466, Revised Statutes, read with Section 3467, requires the Florida receiver to pay first the claims of the United States out of any assets of the surety company in his hands available for distribution. The residue falls within the plain terms of the statute. This, we submit, follows whether the interest of the surety company be merely equitable or be the full legal title subject to the liens, since such interest would in any event constitute assets of the debtor.

The Government's position is not opposed to those decisions in the lower Federal courts (*supra*, p. 17, note) which subordinate claims of the United States to expenses incurred by the receiver or assignee on the ground that only the net assets are available for distribution to any creditors. No claim is made to payment ahead of the expenses of the Florida receivership. The domiciliary liquidator can not bring himself within the doctrine of the cases on administrative expenses except to the extent that he claims to have taken specific steps to

aid the Florida receiver in conserving these assets. As to such expenses his claim is addressed to the discretion of the Florida chancery court and if allowed should be treated as an expense incurred in the ancillary proceedings. But his general claim to any assets remaining can rest on no services performed in conserving assets to be available for satisfaction of claims of the United States.

CONCLUSION

We respectfully submit that the judgment of the court below should be reversed and the case remanded with instructions that a judgment be entered in favor of the priority of the United States over all other claims.

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MARCH 1936.

APPENDIX

Sections 3466 and 3467 of the Revised Statutes of the United States (U. S. C., Title 31, Secs. 191, 192) provide:

> SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.
>
> SEC. 3467. Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

Section 6302, Compiled General Laws of Florida:

> *Requirements to do business in this State.*—Companies herein described, char-

tered by this State, or other States or foreign Governments, now doing business in this State, or hereafter doing business in this State, which offer or undertake to become surety upon any bond, or surety contract, before being accepted as surety thereon, shall be required to deposit with the Treasurer of this State bonds of the United States, or bonds of any State of the United States, and which amount according to their market value, to seventy-five thousand dollars which bonds shall be receipted for by the State Treasurer and held or deposited by him. And whenever such company ceases to do business in this State, and has settled up all claims against it, as hereinafter provided, and has been released from all the bonds upon which they have been taken as sureties said bonds shall be delivered up to the proper party on presentation of the Treasurer's receipt for said bonds. While said bonds are so deposited with the Treasurer, the owner of the same shall be entitled to collect the interest on the same. For the bonds so deposited, the faith of the State is pledged that they shall be returned to the party or parties entitled to receive the same.

Section 6303, Compiled General Laws of Florida:

"*Final judgment against surety company.*—Whenever final judgment has been rendered against any surety company on a fidelity or surety bond, said surety shall pay the same within thirty days. Upon notice of failure to pay said amount within said time, the State Treasurer shall retain said bonds, or so much thereof as may be necessary to cover said judgment and costs, subject to the order of the court trying any suit that may be brought upon such bond.

Chapter 16248, Laws of Florida, 1933:

SECTION 1. That Section 4340 of the Revised General Statutes of Florida of 1920, the same being Section 6303 of the Compiled General Laws of Florida 1927, be and the same is hereby amended to read as follows:

"6303 (4340) FINAL JUDGMENT AGAINST SURETY COMPANY.

"Whenever a final judgment has been rendered against any surety company on a fidelity, appearance, supersedeas or surety bond, the surety on said bond shall pay the same within thirty days. Upon notice of failure to pay the amount due under said bond within said time, the State Treasurer shall retain the bonds or securities deposited with him by said surety company under Section 4339 of the Revised General Statutes of Florida of 1920, and acts amendatory thereof, or as much thereof as may be necessary to cover said judgment and costs, subject to the order of the Court trying any suit that may be brought upon said bond: Provided, however, that in the event of the adjudication of insolvency of any such surety company by a court of competent jurisdiction, or in the event its assets should be placed in liquidation in the State of its incorporation, the Court of Chancery, at the seat of Government in Florida shall have jurisdiction, upon bill filed by any party in interest, to take charge of the securities so deposited with the State Treasurer under the provisions of Section 4339 of the Revised General Statutes of Florida of 1920, and acts amendatory thereof, together with any other assets of such surety company, which may be marshaled in the State of Florida, to direct a sale of the said securities at public or private sale and on such terms as the said court deems proper and, after paying all

costs and expenses, including reasonable counsel fees incurred in connection with said proceedings, all as allowed by the court, to distribute the proceeds of the sale of said securities proportionally among all of the Florida creditors who may make proof of their claims against any such surety company to the satisfaction of said court, the surplus, if any, to be disposed of by proper order of such court. The said court is empowered to ascertain, as far as practicable, the names and addresses of all Florida creditors and the amounts due and owing to them under bonds given by said surety company, and to notify the Florida creditors to make proof of their claims and to determine the validity and the amount due each of them. The claims of all Florida creditors of any such surety company not reduced to final judgment prior to the time the said Court of Chancery takes charge of such Florida assets shall participate in the proceeds of the sale of said securities and assets only on a proportional basis with other Florida creditors: Upon the said Court of Chancery assuming jurisdiction of the said securities and assets of such surety company, all actions against the said company and the said securities and assets shall be stayed, pending the further orders of said Court and the State Treasurer, and the State of Florida shall thereby be absolved from any further liability on account of said securities, and the right of said surety company to transact business in this State shall cease and determine.

SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 3. This Act shall take effect upon becoming a law.

Approved May 10, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933

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FILE COPY

No. 643

JAN 8

Supreme Court of the United States

OCTOBER TERM, 1935

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

W. V. KNOTT, as State Treasurer and Ex-Officio Insurance Commissioner of the State of Florida, and NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY.

BRIEF OF D. M. LOWRY, RECEIVER IN THE STATE OF FLORIDA OF NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY, IN OPPOSITION TO THE PETITION OF THE UNITED STATES FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA, IN THE ABOVE STYLED CAUSE.

C. L. WALLER,
Tallahassee, Florida,
Of Counsel for D. M. Lowry, Receiver in the State of Florida of New Jersey Fidelity and Plate Glass Insurance Company.

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Supreme Court of the United States

OCTOBER TERM, 1935

THE UNITED STATES OF AMERICA,

Petitioner,

vs.

W. V. KNOTT, as State Treasurer and Ex-Officio Insurance Commissioner of the State of Florida, and NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY.

BRIEF OF D. M. LOWRY, RECEIVER IN THE STATE OF FLORIDA OF NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY, IN OPPOSITION TO THE PETITION OF THE UNITED STATES FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA, IN THE ABOVE STYLED CAUSE.

D. M. Lowry, Receiver in the State of Florida of New Jersey Fidelity and Plate Glass Insurance Company, upon the considerations to be hereinafter set forth, respectfully submits that the petition for writ of certiorari in this cause should be denied.

Amplification of Statement By The Petitioner

The statement by petitioner is reasonably accurate, but it fails to give emphasis to certain phases of the procedure in the Circuit Court of Leon County, Florida, which this respondent believes are important. The first order made by the Circuit Court of Leon County, which adversely affected the United States, was made on May 28, 1934 (R. 199-201), wherein the Court said in part:

> "The Court is of the opinion, and doth so find that the securities were deposited by the surety company with the State Treasurer, as Insurance Commissioner, for the protection of the State of Florida and its citizens and political subdivisions; that this fund was segregated and set apart out of the general assets of the surety company prior to the accrual of any liens in favor of the United States and that the Legislature of the State of Florida, in enacting such legislation did so with the intention of protecting those for whom it had the power to legislate, and that it was not the intent and purpose of the Legislature to undertake to protect or secure claims or obligations due the Government of the United States. Entertaining these views, the Court is of the opinion that the Federal Government is not entitled to participate in the funds derived from the sale of securities deposited with the State Treasurer, as aforesaid, until and unless the claims of residents and citizens of the State of Florida, political subdivisions of the State of Florida, and the State of Florida, holding obligations arising out of surety bonds or surety contracts, shall have first been paid.

The Court is of the further opinion that after all claims arising out of surety bonds and surety contracts held and proven by residents of Florida, political subdivisions of Florida, of the State of Florida, shall have been paid by the Receiver, and that there should then remain a surplus in the hands of said Receiver, and that such surplus would thereupon become general assets of the said surety company, and that under Section 191, Title 31, of the United States Code Annotated, the United States Government would then have the prior right to participate in such surplus in the event it should not be made to appear that the said claims of the United States have not theretofore been paid."

No appeal was ever taken from the above order.

The order of the lower court, from which the appeal by the United States was taken, was that of October 27, 1934, (R. 254) five months after the making of the order above referred to, wherein the court found, in part, as follows:

"3. That after the payment of the claims hereinabove and heretofore allowed as payable, together with the costs, charges, and expenses of this receivership heretofore allowed, that the receiver do file with this court a statement of the net balance remaining in his hands as such receiver.

4. The question of what shall be done with the residue then remaining in the hands of the said receiver is reserved for the further order of the court and the relative rights of the United States and creditors whose claims are not secured by the special deposit or trust fund, as well as the claim of William H. Kelly, as Commissioner of Banking and Insurance of New

Jersey, for the payment to him of moneys alleged to have been expended by him in the interest of preservation of the assets of said surety company in the State of Florida, as well as the petition of the said William H. Kelly, as Commissioner of Banking and Insurance of the State of New Jersey, to receive the residue that will remain in the hands of the Receiver after the payment of all claims hereinabove allowed, is reserved for further determination of this court; since it appears that sufficient funds will remain in the hands of the said receiver after the payment of all claims of the United States as well as the claim of the said William H. Kelly for reimbursement, therefore, the payment of the claims herein and heretofore allowed will in no wise prejudice the United States, or the said William H. Kelly, nor the common creditors, to wit: Snedigar & Baya, N. R. Robinson and Joseph M. Schlesinger, on which claims decision is hereby reserved."

It will be observed that the decree of May 28th, held that the securities deposited by the New Jersey Fidelity and Plate Glass Insurance Company with the Treasurer of the State of Florida, constituted a trust fund for the benefit of the State of Florida, its citizens and political subdivisions, and that the claims of the United States could only be paid out of this trust fund in the event there remained a surplus after the payment of the beneficiaries of the trust fund.

It will also be observed that in the order appealed from, to-wit, the order of October 27th, 1934, the decision of the court was reserved as to the payment of the claims of the United States out of the residue in the hands of the Re-

ceiver, which residue the Court found was more than sufficient to pay all claims of the United States as well as all other unpaid claims. The appeal in the case was taken by William H. Kelly, and the United States became a cross-appellant by filing assignments of error, which appeal is on page 303-304 of the Record. The cross-assignments of error of the United States, and the appeal by William H. Kelly are directed to the order of October 27, 1934, and no appeal was taken from the order of May 28th, 1934.

After the order of October 27, 1934 was entered, the United States amended its claims for the evident purpose of bringing the claims within the protection of the Federal priority statute (R. 299 and R. 302). (1)

The conclusions of petitioner as to the holdings of the Supreme Court of Florida, are too meager to be accurate. The decision did not deny the United States "any right to participate in the fund in question", as stated in the petition, but denies that the United States had a prior right to the benefits of a trust fund established under the provisions of an Act of the Legislature of the State Florida, for the benefit of Florida claims. The decision recognized the right of the United States to be paid out of the residue remaining after the discharge of the trust, relative to which the court said in part as follows: (R. 356)

> "And in view of the provisions of the Federal Government's specially provided statutory rights under Section 191 and 192, Title 31 U. S. C. A., as against the general assets of the insolvent surety company

(1) NOTE: The date of the filing of the amendments of the claims of the United States and the order allowing the filing of same does not appear in the printed copy of the record before this Honorable Court, but the affidavit taken by the Notary on the 13th day of December 1934, shows that the amendments were sworn to before said Notary on that date.

enforceable against the general assets of the company in the hands of the domiciliary liquidator, or out of any residue of the special Florida deposits which may remain to be turned over to the domiciliary liquidator as general assets, after the satisfaction thereout of Florida claims, it would do violence to the ordinary rules of statutory construction to now so construe the Florida statutes as to make them inure to the special protection of the United States, as well as Florida creditors.

So the cross assignments of error filed by the United States on this appeal are overruled and the decision of the lower court as to the status of the claim interposed by the United States is approved as correct."

Questions Presented

1. Since no appeal was taken from the order of the Circuit Court of Leon County dated May 28th, 1934, determining the rights of the United States to have prior right of participation in the trust fund in the hands of the Receiver, and since the only question presented by the order of October 27th, 1934, from which the appeal was taken, reserved decision on the claims of the United States as to whether the Florida Receiver should pay the claims of the United States out of the residue or whether same should be transmitted to the domiciliary liquidator of the Surety Company in New Jersey, was the order appealed from a final judgment, so as to confer jurisdiction upon this court to review same by certiorari under the provisions of Section 237, Judicial Code, as amended by the Act of February 13, 1925, paragraph (b), Section 344 Title 28 U. S. C. A.?

2. Was the petitioner adversely affected by the order

appealed from, in view of the fact that more than ample funds remained in the hands of the Receiver for the payment of the claims of the United States as well as all other claims against the Receiver?

3. Since the funds in the hands of the Receiver were deposited pursuant to a State Statute, enacted by the Legislature of Florida in the exercise of its police power, would not the decision of the Supreme Court of Florida construing such statute, be binding upon this Honorable Court?

4. Since the Florida Supreme Court, in construing a State Statute, has held that the fund in the hands of the Receiver is a trust fund for the benefit of those for whom the State had the power and duty to legislate, is a substantial federal question presented herein merely because of the existence of the federal priority statute, which this court has held does not abrogate prior liens or bona fide transfers?

5. Do the allegations in the claims of the United States, without the amendments made subsequent to the date of the order appealed from, bring the claims of the United States within the protection of the federal priority statute?

6. Since the substantial question involved in the decision of the Supreme Court of Florida was whether or not the deposit of the State Treasurer constituted a trust fund, was not the holding of that court to the effect that such deposit was a trust fund in accord with applicable decisions of this Honorable Court?

ARGUMENT

Question 1. Since no appeal was taken from the order of the Circuit Court of Leon County dated May 28th, 1934, determining the rights of the United States to have prior right of participation in the trust fund in the hands of the Receiver, and since the only question presented by the order of October 27th, 1934, from which the appeal was taken, reserved decision on the claims of the United States as to whether the Florida Receiver should pay the claims of the United States out of the residue or whether same should be transmitted to the domiciliary liquidator of the surety company in New Jersey, was the order appealed from a final judgment, so as to confer jurisdiction upon this court to review same by certiorari under the provisions of Section 237, Judicial Code, as amended by the Act of February 13, 1925, paragraph (b), Section 344 Title 28 U. S. C. A?

It will be observed that the order in question (R. 253-254) expressly stated that: "The question of what shall be done with the residue * * and the relative rights of the United States and other creditors whose claims are not secured by the special deposit or trust fund * * * * is reserved for further determination of this court;"

The Court has rendered a decree on May 28, 1934 (R. 198-201), declaring that the Federal priority statute did not give the United States a prior right to be paid out of the trust fund deposit by the Surety Company with the State Treasurer, but that the United States would have

a prior right to participate in any surplus remaining in the hands of the Receiver after the payment of trust fund obligations. This order was a final adjudication of the rights of the United States as to priority of payment out of the trust fund. But, no appeal was ever taken from this decree. The lower court in the particular order appealed from did not pass upon the Federal priority statute. It had done this five months previously.

It seems, therefore, that a consideration of the Federal priority statute is not involved in this controversy; that no federal question arises; that the appeal was taken from the wrong order; that the order from which the appeal was taken was not a final judgment; and that the opinion of the Supreme Court of Florida dealing with the Federal priority statute was mere dictum.

The jurisdiction of this Court to review by certiorari extends only to final judgments or decrees. Locher vs. Schroeder, 13 S. Ct. 934; 149 U. S. 580; Arnold vs. U. S. for Use etc., 44 S. Ct. 144; 263 U. S. 437.

It is true that the opinion of the Supreme Court of Florida dealt with the Federal priority statute, and pronounced certain dicta with an air of finality, but if the basic order from which the appeal was taken was not a final order, the opinion of the Supreme Court of Florida would not make it a final order, particularly when the priority statute was not involved in the order appealed from, but had been previously passed on in the order of May 28, 1934.

Question 2: Was the petitioner adversely affected by the order appealed from, in view of the fact that more than ample funds remained in the hands of the Receiver for the payment of the claims of the United States as well as all other claims against the Receiver?

It appears from the report of the Receiver (R248), and from paragraph 4 of the order appealed from (R. 254), that ample funds remained in the hands of the Receiver with which to pay the claims of the United States and all other claims, but the question as to whether the United States should be paid by the Florida Receiver or whether the residue, after the payment of Florida trust fund claimants, should be transmitted to the Domiciliary Liquidator, had not been determined, and this was the reason the claims of the United States were not then ordered paid. (R. 254).

The United States, therefore, was not adversely affected by the order from which it appealed, and it is not believed that certiorari should issue to settle mere abstract questions of law, and especially when those legal questions were not involved in the order from which an appeal was taken, and, therefore, any judicial pronouncements thereon would be only dicta.

Question 3: Since the funds in the hands of the Receiver were deposited pursuant to a State Statute, enacted by the Legislature of Florida in the exercise of its police power, would not the decision of the Supreme Court of Florida construing such statute, be binding upon this Honorable Court?

Even if the Federal priority statute was involved in the order of October 27th, 1934, it was only incidentally in-

volved. The primary questions arose out of a construction of the Florida Statutes dealing with the deposit of securities by the Surety Company with the State Treasurer, and were: (a) Did the deposit constitute a trust fund? (b) If so, for whom? (c) What priorities did it confer? These were the questions primarily under consideration by the Supreme Court of Florida, the answers to which were all found within the four corners of the State statutes. It was only necessary to determine whether, under the State statutes, the United States was a beneficiary of the trust fund. The Court held that because the State was under no duty and had no power to legislate for the United States, and because Congress had legislated to safeguard the Federal Government against insolvent surety companies, it followed that the United States was not a beneficiary of the trust fund under the State statutes. The petitioner was in a State court, seeking payment out of a fund deposited under a State statute, and which could only be reached pursuant to the State law. If the State statute had made the United States a beneficiary it would have participated primarily with other obligees in surety bonds. If it were not a beneficiary it could not invade the sacred trust fund which was segregated from the general assets of the surety company and deposited with the State Treasurer prior to the accrual of any of the obligations represented in the claims of the United States.

We, therefore, submit that the decision of the Supreme Court of Florida has merely construed Florida Statutes, and that this Honorable Court will not disturb this construction.

Question 4: Since the Florida Supreme Court, in construing a State statute, has held that the fund in the hands of the Receiver is a trust fund for the benefit of those for whom the State had the power and duty to legislate, is a Federal question presented herein merely because of the existence of the Federal priority statute, which this court has held does not abrogate prior liens or bona fide transfers?

Under the third heading in this argument we have tried to show that the determining questions were the purpose, and the effect of the Florida statutes dealing with deposits by a surety company with the State Treasurer, and that if a trust were created only beneficiaries could participate in the fund. This involves no Federal question. Who the beneficiaries were involves no Federal question. However, if a Federal question were incidentally involved as to the effect of the Federal priority statute, upon a valid trust created before the accrual of the obligation to the United States, such question has been previously settled by the decisions of this Honorable Court, wherein it has been held that prior liens or valid transfers are not displaced by the priority statute. Brent vs. Bank of Washington, 10th Pet. 596, 9th L. Ed. 547; U. S. vs. Guaranty Trust Company of New York, 33rd Fed. (2d) 533, Affirmed—50 S. Ct. 212, 280 U. S. 478, 74 L. Ed. 556; Leary vs. U. S. 229 Fed. 660, Affirmed—38 S. Ct. 1, 245 U. S. 1, 62 L. Ed. 113.

Question 5: Do the allegations in the claims of the United States, without the amendments made subsequent to the date of the order appealed from, bring the claims of the United States within the protection of the Federal priority statute?

The only Federal question that could be remotely connected with this litigation is the effect of the Federal priority statute, and in order for the priority statute to be invoked the claimant must show that his claim comes within the priority statute. The right of priority is not an attribute of sovereignty, but depends entirely upon the act of Congress. U. S. vs. State Bank of North Carolina, 6 Pet. 29, 30; 8th L. Ed. 308.

Attention is called to the fact that in the claims filed by the United States in the receivership it appeared that the claims arose out of appearance, or bail bonds in criminal prosecutions and that the obligation was a penal obligation and not a "debt", for which priority is given by the Federal Statute. It did not appear that all of the assets of the insolvent surety company were in the hands of the Florida Receiver, which seems to be an essential requirement in order for priority to attach. U. S. vs. Hooe et al, 3 Cranch 73; Davis vs. Miller-Link-Lbr. Co. 296 Fed. 649; Equitable Trust Co. of New York vs. Conn. Brass & Mfg. Corp. 290 Fed. 701. Neither does it appear from the claims of the United States, at the time of making the order of October 27, 1934, that the Surety Company had made a voluntary assignment. It is true that the United States undertook to amend its claims to make the latter showing, but it did not do so until long after the making of the order appealed from.

We realize that the argument under the fifth heading herein is perilously close to an argument on merits, but it would seem that if the petitioner did not sufficiently show to the lower court that its claims came under the protection of the Federal priority statute that it could not amend its claims after the order was granted and then insist that a Federal question is here involved such as would entitle it to a review by certiorari.

Question 6: Since the substantial question involved in the decision of the Supreme Court of Florida was whether or not the deposit of the State Treasurer constituted a trust fund, was not the holding of that court to the effect that such deposit was a trust fund in accord with applicable decisions of this Honorable Court?

In the case of Blake vs. McClung, 19 S. Ct. 165; 172 U. S. 239, this Court said:

> "It may be appropriate to observe that the objections to the statute of Tennessee do not necessarily embrace enactments that are found in some of the states requiring foreign insurance corporations, as a condition of their coming into the State for purposes of business, to deposit with the State Treasurer funds sufficient to secure policy holders in its midst. Legislation of that character does not present any question of discrimination against citizens forbidden by the Constitution. Insurance funds set apart in advance for the benefit of home policy holders of a foreign insurance company doing business in the state are a trust fund of a specific kind to be administered for the exclusive benefit of certain persons. Policy holders in other states know that those particular funds are

segregated from the mass of property owned by the company and that they cannot look to them to the prejudice of those for whose special benefit they were deposited."

In McCoon vs. Scales, 76 U. S. (9 Wall) 23; 19 L. Ed. 545, the Court said (p. 548 L. Ed.):

"The Legislature of Wisconsin had made provision by special statute for a case in which a bank whose functions had ceased, but which yet owned property and owed debts in Wisconsin, might be sued and the property subjected to those debts. The constitutionality of this act is denied; but no provision of the constitution of Wisconsin, or of the United States is pointed out which is opposed to such legislation. It would, on the contrary, be a strange defect in the legislative power if, under such circumstances, a state could not frame laws which would enable her citizens to subject lands of a corporation whose charter had expired to the debts which it owed her citizens."

In Paul vs. Virginia, 8 Wall. 168, 19 L. Ed. 357, a statute requiring corporations to deposit securities was held constitutional.

It will be observed that the decision of the Supreme Court of Florida was based upon the relative rights of the parties existing at the time the deposit was made by the Surety Company with the State Treasurer; and not upon Chapter 16248 of the Acts of Florida of 1933, which latter Act was held to be merely declaratory of what was already the Florida law subject to which the deposited securities were put up to be held, "subjected, or distributed, as occasion might arise", and would not, therefore, disturb vested rights.

Conclusion

It is respectfully submitted for the reasons hereinabove set forth that the petition for certiorari should be denied.

C. L. WALLER,
Tallahassee, Florida,
Of Counsel for D. M. Lowry, Receiver in State of Florida of New Jersey Fidelity & Plate Glass Insurance Co.

APPENDIX

Section 3466 of the Revised Statutes of the United States (U. S. C., Title 31, Sec. 191):

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Section 6302, Compiled General Laws of Florida:

> *Requirements to do business in this State*—Companies herein described, chartered by this State, or other States or foreign Governments, now doing business in this State, or hereafter doing business in this State, which offer or undertake to become surety upon any bond, or surety contract, before being accepted as surety thereon, shall be required to deposit with the Treasurer of this State bonds of the United States, or bonds of any State of the United States, and which amount according to their market value, to seventy-five thousand dollars which bonds shall be receipted for by the State Treasurer and held or deposited by him. And whenever such company ceases to do business in this State, and has settled up all claims against it, as hereinafter provided, and has been released from all the bonds upon which they have been taken as

sureties said bonds shall be delivered up to the proper party on presentation of the Treasurer's receipt for said bonds. While said bonds are so deposited with the Treasurer, the owner of the same shall be entitled to collect the interest on the same. For the bonds so deposited, the faith of the State is pledged that they shall be returned to the party or parties entitled to receive the same.

Sections 6303, Compiled General Laws of Florida:

Final judgment against surety company.—Whenever final judgment has been rendered against any surety company on a fidelity or surety bond, said surety shall pay the same within thirty days. Upon notice of failure to pay said amount within said [illegible], the State Treasurer shall retain said bonds, or so much thereof as may be necessary to cover said judgment and costs, subject to the order of the court trying any suit that may be brought upon such bond.

Chapter 16248, Laws of Florida, 1933:

SECTION 1. That Section 4340 of the Revised General Statutes of Florida of 1920, the same being Section 6303 of the Compiled General Laws of Florida 1927, be and the same is hereby amended to read as follows:

"6303 (4340) FINAL JUDGMENT AGAINST SURETY COMPANY.

"Whenever a final judgment has been rendered against any surety company on a fidelity, appearance, supersedeas or surety bond, the surety on said bond shall pay the same within thirty days. Upon notice of failure to pay the amount due under said bond within said time, the State Treasurer shall retain the bonds or securities deposited with him by said surety

company under Section 4339 of the Revised General Statutes of Florida of 1920, and acts amendatory thereof, or as much thereof as may be necessary to cover said judgment and costs, subject to the order of the Court trying any suit that may be brought upon said bond: Provided, however, that in the event of the adjudication of insolvency of any such surety company by a court of competent jurisdiction, or in the event its assets should be placed in liquidation in the State of its incorporation, the Court of Chancery, at the seat of Government in Florida shall have jurisdiction, upon bill filed by any party in interest, to take charge of the securities so deposited with the State Treasurer under the provisions of Section 4339 of the Revised General Statutes of Florida of 1920, and acts amendatory thereof, together with any other assets of such surety company, which may be marshaled in the State of Florida, to direct a sale of the said securities at public or private sale and on sueh terms as the said court deems proper and, after paying all costs and expenses, including reasonable counsel fees incurred in connection with said proceedings, all as allowed by the court, to distribute the proceeds of the sale of said securities proportionally among all of the Florida creditors who may make proof of their claims against any such surety company to the satisfaction of said court, the surplus, if any, to be disposed of by proper order of such court. The said court is empowered to ascertain, as far as practicable, the names and addresses of all Florida creditors and the amounts due and owing to them under bonds given by said surety company, and to notify the Florida creditors to make

proof of their claims and to determine the validity and the amount due each of them. The claims of all Florida creditors of any such surety company not reduced to final judgment prior to the time the said Court of Chancery takes charge of such Florida assets shall participate in the proceeds of the sale of said securities and assets only on a proportional basis with other Florida creditors. Upon the said Court of Chancery assuming jurisdiction of the said securities and assets of such surety company, all actions against the said company and the said securities and assets shall be stayed, pending the further orders of said Court and the State Treasurer, and the State of Florida shall thereby be absolved from any further liability on account of said securities, and the right of said surety company to transact business in this State shall cease and determine.

"SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

"SECTION 3. This Act shall take effect upon becoming a law.

"Approved May 10, 1933."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 643.

UNITED STATES OF AMERICA,
Petitioner,

vs.

W. V. KNOTT, as State Treasurer and ex officio Insurance Commissioner of the State of Florida, and NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY,
Respondents.

BRIEF OF RESPONDENT, CARL K. WITHERS, AS COMMISSIONER OF BANKING AND INSURANCE OF THE STATE OF NEW JERSEY, AND LIQUIDATOR OF THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY.

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BRIEF OF RESPONDENT, CARL K. WITHERS, AS COMMISSIONER OF BANKING AND INSURANCE OF THE STATE OF NEW JERSEY, AND LIQUIDATOR OF THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY.

Statement of Question Involved.

I. Is the priority granted the United States of America under Section 3466 of the revised statutes (Comp. St. Sec. 6372) applicable to an Ancillary Receivership not comprising the domiciliary or primary assets of the insolvent?

Statement of Case.

The statement of case given in the petition for writ of certiorari is accurate, but for the better information of the

Court the following additional facts, apparent in the record, should be stated:

I. The motion filed by WILLIAM H. KELLY, as Commissioner of Banking and Insurance of the State of New Jersey, (R. 4), to amend the bill of complaint in the *original suit* which he, the predecessor in office of this respondent, instituted, was not filed in recognition of any priority granted THE UNITED STATES OF AMERICA by virtue of Section 3466 of the Revised Statutes (Comp. St. 6372). It is apparent from the motion that the judgments excepted from the prayer of the bill, and subsequently excepted from the injunctive order, were, (a) a judgment rendered by the Circuit Court of the Seventeenth Judicial Circuit in and for Orange County, Florida, in favor of one R. E. Hinshaw, and not THE UNITED STATES OF AMERICA, in which case an order had been entered to require the State Treasurer to sell sufficient of the securities of THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY, on deposit in Florida, to pay said judgment, and (b) judgments in favor of THE UNITED STATES OF AMERICA, of which notices had been served under Sections 6302-3 of the Compiled General Laws of Florida, 1927, set forth in the appendix, pages 10-13, of the petition for writ of certiorari filed by THE UNITED STATES OF AMERICA.

Argument.

The respondent, CARL K. WITHERS, successor in office to WILLIAM H. KELLY, as Commissioner of Banking and Insurance of the State of New Jersey, objected to the claims of the petitioner, THE UNITED STATES OF AMERICA, in the *nisi prius* court, on October 20, 1934, (R. 251), and asserted

then, and asserts now, that the claims of THE UNITED STATES OF AMERICA should not be allowed to participate in the distribution of the Florida fund, for the following separate reasons:

1. It affirmatively appears that all of the assets of THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY were not, and are not, located in the State of Florida.

2. It affirmatively appears that THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY has not made a general assignment of all of its assets in the State of Florida.

3. It affirmatively appears that the assets under administration in Florida do not comprise effects of an absconding, concealed, or absent debtor under attachment.

4. It affirmatively appears that THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY has not committed an act of bankruptcy in Florida.

5. It affirmatively appears that THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY has not had its principal place of business in Florida for the greater portion of six months' next preceding the institution of the original suit.

6. The surplus of the Florida fund, if any exists after the payment of the claims entitled to participate therein, should be remitted to the principal liquidator in New Jersey.

7. The Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, in which the original suit

was filed by this respondent's predecessor in office, was without jurisdiction to administer the surplus after the payment of the claims of creditors entitled to participate therein.

The Limitations of the Federal Priority Statute.

The Supreme Court of the United States has held that the Federal priority statute, Section 3466 of the Revised Statutes (Comp. St. Sec. 6372), is applicable only when the insolvency of the estate is manifested in one of the modes specified in the act and not otherwise:

> "In order to give the priority specified in section 3466, there must be a case of an insolvent debtor who makes a voluntary assignment of his property, or a case in which the estate and effects of an absconding, concealed or absent debtor are attached by process of law, or a case in which an act of bankruptcy is committed."
>
> *United States* v. *State of Oklahoma,* 261 U. S. 253, 43 Sup. Ct. 295.

No contention is made, or can be made, that THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY made an assignment of its assets, for assignment means a *general assignment.*

> *Commonwealth* v. *Phoenix Bank,* 11 Metc. 129, 151 (Mass.);
> *Equitable Trust Co. of N. Y.* v. *Connecticut Brass & Mfg. Corporation,* 290 F. 712;
> *Davis* v. *Miller-Link Lumber Co.,* 296 F. 649.

Chief Justice JOHN MARSHALL said:

> "The word 'property' is unquestionably all the property which the debtor possesses; and the word 'thereof' refers to the word 'property' as used, and can only be satisfied by an assignment of all the property of the debtor."
>
> *The United States* v. *Hooe, et al.*, 3 Cranch. 73.

It is the position of this respondent that the priority of the Federal statute can be applied only in New Jersey, for in New Jersey, if in any place, a *general assignment* took place. The assets in Florida comprise only a small part of all of the assets of THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY (R. 306, *et seq.*).

A District Court, administering a *portion* of the assets of an insolvent estate, has disallowed priority under the Federal Statute.

> *Manhattan Rubber Mfg. Co.* v. *Lucey Mfg. Corporation*, 26 F. (2d) 839.

Reason dictates that it is necessary that all of the claims of the UNITED STATES OF AMERICA against THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY, in all the jurisdictions in which the insolvent surety company has been doing business, should be marshaled, to the end that the priority may be properly recognized.

It has not been contended, and cannot be, that THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY in Florida was an absconding, concealed or absent debtor, under attachment by process of law. Nor has it been contended that THE NEW JERSEY FIDELITY AND PLATE GLASS

INSURANCE COMPANY in Florida committed an act of bankruptcy.

It cannot be urged that the National Bankruptcy Act, July 1, 1898 (c. 541, Par. 3, 30 Stats. 546, Sec. 3-a, Sub. 4, Comp. St. 9587), is applicable, in that "while insolvent, a receiver or trustee has been appointed, or put in charge of his property," since the Florida receiver had charge only of the Florida assets, which comprised only a fractional portion of all of the property of THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY, and certainly THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY itself was not amenable to bankruptcy; it was an insurance company (National Bankruptcy Act, as amended February 11, 1932, c. 38, 47 Stats. 47; May 15, 1935, c. 114, Par. 1, 49 Stats. 246), and it did not have its principal place of business anywhere in Florida for the six months preceding the appointment of the receiver, or at any time.

Clearly the Federal priority statute is applicable only to the domiciliary liquidation.

For the very reason that the Federal priority Statute should be respected, the surplus of the Florida fund after the payment only of such claims of Florida citizens as had judgment liens against the Florida fund, fixed by State Statute, should be remitted to the domiciliary liquidation where it is subject to administration by this respondent. The effect of the payment of the government claims in Florida would be to deny the priority granted by the Federal statute, if the court should hold that the priority statute is applicable to claims of the nature of the government's claims in Florida.

The Jurisdiction of the Court.

It is the contention of this respondent that the surplus of the Florida fund, after the payment of the claims of all citizens of Florida entitled to priority, admittedly constitutes general assets and certainly the general assets should be remitted to the domiciliary liquidator.

In Great Western, etc. v. *Harris,* 198 U. S. 561;
Sterritt v. *Second National,* 248 U. S. 73.

The State of Florida is powerless to administer these. Since Florida cannot administer the general assets for priority claims or for any other purpose, the court is without jurisdiction to administer these.

Conclusion.

WHEREFORE, this respondent maintains that the government is not entitled to participate in the Florida fund and after the payment of all claims of Florida citizens entitled to participate therein, the surplus of the fund should be remitted to New Jersey, where the government's claims may and have been presented (R. 298).

The petition should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935
No. 643

THE UNITED STATES OF AMERICA,
Petitioner

vs.

W. V. KNOTT, as State Treasurer and Ex-Officio Insurance Commissioner of the State of Florida, and NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY,
Respondents

CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF RESPONDENTS, W. V. KNOTT, STATE TREASURER AND EX-OFFICIO INSURANCE COMMISSIONER OF THE STATE OF FLORIDA, AND OF D. M. LOWRY, RECEIVER IN THE STATE OF FLORIDA, OF THE NEW JERSEY FIDELITY AND PLATE GLASS INSURANCE COMPANY

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THE OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Florida, under date of June 24, 1935, is reported in 163 Southern Reporter, 64, under the style of Kelly, Commissioner of Banking and Insurance, et al, vs. Knott, State Treasurer, et al—and London Operating Company vs. New Jersey Fidelity & Plate Glass Insurance Company, et al, and appears at pages 347-356 of the Record. The order of the Leon County Circuit Court, from which the appeal was taken (Record 253-254) is not officially reported.

STATEMENT

The New Jersey Fidelity and Plate Glass Insurance Company, a New Jersey Corporation, in 1930 deposited securities of the face value of Seventy-five Thousand ($75,000.00) Dollars with the Treasurer of the State of Florida, in accordance with Section 6302 and Section 6303, Compiled General Laws of Florida, in order to qualify to transact the business of a surety company in that State. On May 28, 1932, the Surety Company was placed in the hands of the Commissioner of Banking and Insurance of the State of New Jersey. On May 17, 1933, D. M. Lowry was appointed Receiver in the State of Florida, of all assets of the said Surety Company, under the authority of Chapter 16248, Acts of 1933, the same being amendatory of Section 6303, Compiled General Laws of Florida, supra. The State Treasurer, pursuant to Court order, turned over the securities to the Florida Receiver. The United States filed twenty (20) separate claims, aggregating $14,075.00 (Rec. 157-163; 165-166). The printed record sets out Claim #14 in full. The other nineteen (19) claims are merely recited, (Rec. 293-295) but the recited claims are in substantially the same form and verbiage as Claim #14.

Each claim of the United States arose out of an appearance, or bail, bond executed in a criminal case by the defendant with the United States as obligee. Upon the failure of the defendant to appear for trial the several bail bonds were estreated and judgment later entered thereon.

These judgments remained unpaid for more than thirty (30) days, whereupon, certified copies of the judgments were filed with the Treasurer of Florida, together with notices that the Surety Company had failed to pay the judgments. The filing of the certified copies of the judgments, and the giving of the notices of their non-payment, was in accordance with Section 6303, Compiled General Laws of Florida. Numerous claims, arising out of surety bonds, were filed by citizens of Florida, who largely were obligees in surety bonds.

The Circuit Court of Leon County, Florida, on the 28th of May, 1934 (Rec. 199-201) held, that the securities were deposited by the Surety Company with the State Treasurer for the protection of the State of Florida, its citizens and political subdivisions; that the securities were segregated and set apart out of the general assets of the Surety Company prior to the accrual of any liens of, or obligations to, the United States; that the Legislature of Florida in enacting the legislation requiring such deposit did so with the intention of protecting those whom it had the power and duty to protect; that the deposit with the State Treasurer constituted a trust fund for the benefit of the State of Florida, its political subdivisions and its citizens; that the United States was not a beneficiary of said trust fund; that the beneficiaries of said trust fund, to-wit: the citizens and political subdivisions of the State of Florida, were first entitled to be paid out of the trust fund; and

that any surplus remaining thereafter would become general assets of the Surety Company, and under Section 191, Title 31 of the U. S. C. A. (Sec. 3466 Revised Statutes), the United States would have the prior right to participate in such surplus. No appeal was taken from the above order.

On October 27, 1934, the Circuit Court of Leon County ordered the claims of Florida citizens and political subdivisions paid by the Receiver, but reserved the question of whether or not the claims of the United States should be paid by the Florida Receiver out of the residue, or whether it should be transmitted to the domiciliary liquidator for payment, and in said order reciting that "sufficient funds would remain in the hands of the Receiver, after the payment of Florida creditors, to pay the claims of the United States, and that the payment thereof would 'in nowise prejudice the United States' " (Rec. 253-254).

An appeal was taken from this order of October 27, 1934, by Wm. H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey. (Rec. 255-256). Cross assignments of error were filed by the United States (Rec. 303-304) in the Kelly appeal, wherein the assignments of error were directed to the order of October 27, 1934, and the order of August 7, 1934, but no assignments of error were directed to the order of May 28, 1934. Neither the appeal of Wm. H. Kelly, nor the cross appeal by the United States brought up for consideration the order of May 28, 1934, nor the order of August 7, 1934 (Rec. 235-239).

After an amendment of its claims on November 17, 1934 (Rec. 297-298-299), the United States again amended its claims (Rec. 300-303). (The date of which amendments is not shown by the record, but the jurat thereto, on page

302 of the Record, shows that they were sworn to on the 13th day of December, 1934.) The amendments, therefore, were made after the order of October 28, 1934, and after the entry of the appeal on the 5th of November, 1934. The earliest judgment among the claims of the United States was entered on September 15, 1932, being Claim #25 (Rec. 295). Six of the judgments were rendered in 1932, but none earlier than September 15th of that year. Fourteen of the judgments were rendered during the year 1933 (Rec. 293-295). The deposit with the State Treasurer was made in 1930 (Rec. 311). All of the claims of the United States, therefore, accrued subsequent to the time the securities were segregated from the assets of the Surety Company and deposited with the State Treasurer.

The Supreme Court of Florida affirmed the decree of the Circuit Court of Leon County, Florida, holding in substance as follows:

(a) That neither the Constitution of the United States nor the Constitution of Florida prohibits the State from requiring a foreign surety company to make a special deposit with the State Treasurer to be held in trust for the benefit and security of Florida resident creditors;

(b) That the deposit so established created a trust fund;

(c) That the correct answer of the purposes of the deposit is "to be found in the necessary meanings and intendments comprehended within the scope of the language of the statute under which the deposit of securities were required to be made. Sec. 4339 Revised General Statutes; Sec. 6302 Compiled General Laws.";

(d) That Chapter 16248, Acts of 1933, was "merely declaratory of what was already the Florida law subject

to which the deposited securities were put up to be held, subjected or distributed, as occasion might arise.";

(e) That the fund represented by the deposited securities, is also in the nature of a fund held in trust for the benefit of domestic creditors of the depositing surety company, as a condition precedent to its right to transact a surety business in this State;

(f) That it was competent for the Legislature of 1933 to enact Chapter 16248, setting up a special chancery proceeding by which the trust could be enforced and discharged in the event of the depositor's insolvency;

(g) That neither Section 6302, Section 6303 Compiled General Laws, or Chapter 16248, Acts of 1933 comprehend that claims or judgments recovered by the United States shall be within the purview of the trust purposes provided for by said Sections, since the Legislature of Florida was presumed to have enacted its protective legislation for the benefit of Florida claims arising out of the corporation's transaction of business in Florida, and to have provided for the creation of this special trust fund deposit for their particular benefit.

(h) That in view of legislation by Congress for the protection of the United States in the matter of the issuance of surety bonds, the United States cannot rely upon the Florida statutes with reference to its surety bonds;

(i) That the Federal priority statute, Sections 191 and 192, Title 31 U. S. C. A., is operative against the general assets of the surety company in the hands of the domiciliary liquidator, or against the residue of the special Florida deposit after the satisfaction of Florida claims.

QUESTIONS PRESENTED

I. A Foreign Surety Company segregated, set aside and deposited with the State Treasurer of the State of Florida securities in the Amount of Seventy-five Thousand Dollars ($75,000.00) in conformity with the requirements of State Statutes. Subsequently the Surety Company executed certain penal obligations, or appearance bonds, with the United States as obligee. Upon the insolvency and receivership of the Surety Company the following questions arise relative to the distribution of the proceeds of the sale of such securities as between the United States and residents of Florida:

(a) Does such a deposit constitute a trust fund?

(b) If the deposit is a trust fund who are the benificiaries, and in the absence of a definite statutory designation of beneficiaries how shall they be determined?

(c) Does the right to participate in such trust fund depend upon the construction of the statute creating the trust fund, or does it depend upon the construction of the Federal Priority Statute (Sec. 191 Title 31 U. S. C. A.; Sec. 3466 RS)?

(d) If the deposit created a Statutory Trust Fund prior to the accrual of the obligations to the United States could such trust fund be violated by resort to the Federal Priority Statute?

(e) May a Federal Collection Statute abrogate, or set at naught, a State Statute enacted in the exercise of the Police power of the State?

(f) Where Congress has prescribed the conditions upon which a surety company may be accepted

as surety on surety bonds running to the United States, can the Federal government rightfully rely upon State Statutes prescribing the conditions upon which surety companies may write bonds within that State, to the end that the protection designed by the State Statute for the citizens of that State, might be wholly consumed by the Federal government?

(g) Since the Federal Government's right of priority is wholly Statutory, must not the allegations in the claims of the United States be such as to bring such claims within the protection of the Federal Priority Statute?

SUMMARY OF ARGUMENT

(a) That the deposit with the State Treasurer constituted a trust fund for the protection of those for whom the State had the power and duty to legislate, to-wit: The State of Florida, its political sub-divisions, and its residents, the sole beneficiaries of said trust.

(b) That the statute requiring a surety company to make such a deposit is a valid exercise of the police power of the State.

(c) That the right to participate in such trust fund depends upon the construction of the State statute creating the trust fund, and not upon the Federal priority statute, and, therefore, no Federal question of substance is involved.

(d) That the deposit creating the trust fund was made by the segregation of the securities from the general assets of the surety company prior to the accrual of the obligations to the United States, and that even if the priority

statute be invoked, such priority statute would not abrogate, nor affect, the rights of the cestuis que trust in the fund.

(e) That a Federal collection statute cannot set at naught a valid State statute enacted in the exercise of its police power.

(f) That Congress has enacted its own legislation for the protection of the United States against the insolvency of surety companies, and the United States, therefore, cannot take advantage of State statutes enacted for the purpose of protecting the State and its citizens to the prejudice of the State and its citizens. The fact that Congress has enacted legislation prescribing the terms and conditions upon which a surety company may become surety on a bond running to the United States is conclusive evidence of the fact that the United States was not intended to be made a beneficiary of the trust fund by the State.

(g) That the United States' right of priority depends entirely upon the Federal priority statute rather than upon its general powers of sovereignty, and that in order for the claims to come within the protection of the priority statute it was necessary that the allegations of the claims bring the same within the provisions of the priority statute.

ARGUMENT

A foreign surety company segregated, set aside, and deposited with the State Treasurer of the State of Florida securities in the amount of Seventy-five Thousand ($75,000.00) Dollars, in conformity with the requirements of State statutes. Subsequently, the surety company executed certain penal obligations, or appearance bonds, with the United States as obligee. Upon the insolvency and receivership of the surety company the following questions arise relative to the distribution of the proceeds of the sale of such securities as between the United States and residents of Florida;

Question (a): Does such a Deposit Constitute a Trust Fund?

An affirmative answer to this question has been given by this Court in BLAKE vs. McCLUNG, 172 U. S. 239; 19 Sup. Ct. 165, wherein the Court said:

> "It may be appropriate to observe that the objections to the statute of Tennessee do not necessarily embrace enactments that are found in some of the states requiring foreign insurance corporations, as a condition of their coming into the State for purposes of business, to deposit with the State Treasurer funds sufficient to secure policy holders in its midst. Legislation of that character does not present any question of discrimination against citizens forbidden by the

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Note: (Because of the shortness of time for preparing, printing and filing briefs before oral argument, this brief has been prepared prior to the receipt of the brief of the Solicitor General of the United States, and, therefore, is not a reply to the arguments which will therein be made.)

Constitution. *Insurance funds set apart in advance for the benefit of home policy holders of a foreign insurance company doing business in the state are a trust fund of a specific kind to be administered for the exclusive benefit of certain persons.* Policy holders in other states know that those particular funds are segregated from the mass of property owned by the company and that they cannot look to them to the prejudice of those for whose special benefit they were deposited." (Italics supplied).

The Supreme Court of Florida, in the decision hereunder review—Kelly vs. Knott, 163 So. 64,—held that the said deposit was "a statutory trust fund created by the act of deposit in accordance with the Florida statute"; also— "—the fund represented by the deposited securities is also in the nature of a fund held in trust for the benefit of domestic creditors of the depositing surety company, as a condition precedent to its right to transact a surety business in this State."

The Circuit Court of Leon County, Florida, (Rec. 200) held:

> "— which fund the Court believes was a trust fund for the sole protection of the State of Florida, its political sub-divisions and its residents, or citizens."

This Court has repeatedly held statutes, requiring similar deposits, to be valid. McGoon vs. Scales (9 Wall), (U. S. 23), 19 L. Ed. 545 (text Pg. 548); Paul vs. Virginia, (8 Wall), (U. S. 168), 19 L. Ed. 357.

Question (b): If the Deposit is a Trust Fund Who are the Beneficiaries, and in the Absence of a Definite Statutory Designation of Beneficiaries How shall They be Determined? (Prefatory portion of question omitted.)

Ordinarily, in determining who the cestuis que trustent are in any instrument creating a trust, resort would first be had to such instrument. In the instant case, the statutes of Florida, Section 6302, Compiled General laws, requiring the deposit by the surety company, as a condition upon which the surety company could transact a surety business, is the instrument creating the trust under consideration. Of course, in a statute of this nature no beneficiary is specifically named. The statute deals with beneficiaries as a class. But the statute had a purpose. In order, therefore, to determine who the beneficiaries are in this statutory trust, it is necessary to consider the purpose and intent of the statute under which the trust was created and established. For whose benefit and protection was the statute enacted? Our answer is that the statute had for its purpose the protection of those for whom the State had power and duty to legislate. It was enacted in the exercise of the police power of the State, for the welfare, safety and security of the State, its political sub-divisions and its citizens. The State of Florida had no power to legislate in behalf of the State of Georgia, for instance, nor in behalf of its citizens. If it had no such power it certainly had no duty to legislate for the benefit and protection of the sovereign State of Georgia, nor the citizens thereof. By the same reasoning, it had no power, nor duty, to legislate in behalf of the National Sovereign. The United States had its own legislative body, whose laws, within the scope of its legislative power, were supreme, before which contrary laws of the State, upon the same subject matter, must give way.

Congress by Sections 1 to 11, inclusive, of Title 6 of U. S. C. A., had provided the conditions upon which a surety company might write surety obligations in favor of the Federal Government. For instance:

Section 6, Title 6, U. S. C. A., permits the giving of a surety bond.

Section 7, Title 6, U. S. C. A., provides that a surety company giving a bond must appoint a resident agent upon whom process may be served.

Section 8, Title 6, U. S. C. A., requires every surety company, before transacting surety business, to deposit with the Secretary of the Treasury copy of its charter, statement signed by its president and secretary, and must have $250,000.00 paid up capital, and the Secretary of the Treasury must grant authority to the surety company to write bonds.

Section 9, Title 6, U. S. C. A., requires each surety company to file quarterly statements with the Secretary of the Treasury and gives the Secretary of the Treasury the right to revoke the authority of any surety company to transact business and to require additional security to be put up when the Secretary of the Treasury deems such company no longer sufficient security.

Section 10, Title 6, U. S. C. A. provides for suits against such surety companies.

Section 11, Title 6, U. S. C. A. provides that upon the failure to pay any final judgment the company shall forfeit its right to write surety bonds for the Federal Government.

It was, therefore, entirely immaterial to the Federal Government whether or not the surety company had quali-

fied according to the laws of Florida to transact business within that State. It is also true that if Florida had undertaken to prescribe the conditions upon which a surety company could have written surety bonds with the United States as obligee, such an effort would have been both futile and ludicrous.

From the above considerations we reach the conclusion that the State had neither the power, nor duty, to legislate in behalf of the United States, and since it had the power and duty only to legislate in its own behalf, and in behalf of its political subdivisions and citizens, these are the only beneficiaries of the trust fund. From this, it seems to follow, that the United States is not a beneficiary, and *as such* is not entitled to participate in the proceeds derived from the sale of the deposited securities.

The decision of the Supreme Court of Florida here in question, (Kelly vs. Knott, 163 So. 64), said:

> "Neither does Section 6302 Compiled General Laws, 4339 Revised General Statutes, Section 6303 Compiled General Laws, 4340 Revised General Statutes, or Chapter 16248, Acts of 1933, comprehend that claims or judgments recovered by the United States of America shall be within the purview of the trust purpose provided for by said sections. The legislature of Florida *is presumed* to have enacted its protective legislation for the benefit of Florida claims arising out of the corporate transactions of business in Florida, and to have created this special trust fund deposit for their particular benefit."

Since the above is a construction of the State statute by the Supreme Court of Florida, it would seem that this construction would be conclusive, and that the United States is not a beneficiary under the Act, and whatever right to recover that it may have will be other than as a beneficiary in the trust fund.

Question (c): Does the Right to Participate in Such Trust Fund Depend Upon the Construction of the Statute Creating the Trust Fund, or does it Depend Upon the Construction of the Federal Priority Statute? See 3466 R. S. (Prefatory portion of question omitted.)

It will be borne in mind that the Florida Receiver had in his possession only the proceeds from the sale of the securities deposited with the State Treasurer. He had no general assets of the surety company.

We hope we have shown by decisions of this Court, and of the Supreme Court of Florida, that the funds were trust funds of a trust created by the Florida statute and its acceptance by the surety company. It is important to bear in mind that the deposit with the Treasurer was made long prior to the accrual of the claims of the United States. The proceedings were in a State court, against State agencies and officials, in reference to a State statutory fund, which could, under no circumstances, be reached even by a beneficiary except in conformity with the provisions of the State statute. From this state of facts, we are led to inquire, may a litigant claim benefits provided by a valid statute unless he claims under, and in conformity with, the provisions of the statute? or,—to apply the question to the instant case,—may the United States have participation in a valid statutory trust fund in complete disregard of the creative statute? The question seems to supply its own answer. Assuredly the litigant's rights must be determined by the construction and application of the statute creating and controlling the fund. If we are correct in this conclusion, then there is no Federal question involved in

this controversy, and the construction of the State statute, by the State Supreme Court, would be conclusive.

The Federal priority statute (Sec. 3466 R. S., 191 Title 31 U. S. C. A.), never comes into operation until and unless the trust has been executed and a residue remains. The residue of the trust fund, after the execution and discharge of the trust, would then become general assets on which the Federal priority statute would operate, provided, there existed, and were made known, facts which called the priority statute into operation.

The Circuit Court of Leon County, in the order of May 28, 1934 (Rec. 198-201, text 200) decreed:

> "The Court is of the further opinion that after all claims arising out of surety bonds and surety contracts held and proven by residents of Florida, political subdivisions of Florida, of the State of Florida, shall have been paid by the Receiver, and that there should then remain a surplus in the hands of said Receiver, that such surplus would thereupon become general assets of said surety company, and that under Section 191, Title 31, of the United States Code, Annotated, the United States Government would then have the prior right to participate in such surplus - - - - "

In the order appealed from, under date of October 27, 1934, (Rec. 253-254), the Circuit Court of Leon County, Florida, said:

> " - - - since it appears that sufficient funds will remain in the hands of the said Receiver after (for) the payment of all claims of the United States - - -, therefore, the payment of the claims herein and heretofore allowed will in nowise prejudice the United States - - - "

The report of the Receiver (Rec. 248) shows that the total undisposed of claims, including the claims of the United States, amounted to $35,149.92, with estimated assets remaining of $38,491.99. The estimated assets were based upon the par value of the securities. However, the securities were sold at 110% of the par value (Rec. 252), so that the estimated remaining assets of $38,491.99 are in reality $45,591.99, as against the total remaining claims of $35,149.92.

The Supreme Court of Florida, in its opinion in this case, (Kelly vs. Knott, 163 So. 64) recognized the prior right of the United States to the general assets after the discharge of the trust. It said:

> "And in view of the provisions of the Federal Government's specially provided statutory rights under Sections 191 and 192, Title 31 U. S. C. A., as against the general assets of the insolvent surety company, enforcible against the general assets of the company in the hands of the domiciliary Liquidator, or out of any residue of the special Florida deposits, which may remain to be turned over to the domiciliary liquidator, as general assets, after the satisfaction thereout of Florida claims, it would do violence to the ordinary rules of statutory construction to now so construe the Florida statutes as to make them inure to the special protection of the United States, as well as Florida creditors."

We, therefore, submit:

(a) That the right of the United States to participate in the trust fund herein, as such, depends upon the construction of the Florida statute, and not the Federal priority

statute. See McGoon vs. Scales, 76, U. S. (9 Wall) 23; 19 L. Ed. 545; Beale Conflict of Laws—Vol. 2 pg. 964;

(b) That because of the Federal Government's own statutes for its protection, it is presumed not to be entitled to participate in the Florida trust fund prior to the fulfillment of the trust;

(c) That upon the execution of the trust and the discharge of the trust fund therefrom, the remaining assets then become general assets, in which the Circuit Court of Leon County, Florida, as well as the Supreme Court of Florida, recognized the prior right of participation by the United States;

(d) That the record shows that more than ample funds remain in the hands of the Florida Receiver to pay the claims of the United States in full;

(e) That in view of the holdings of the Circuit Court of Leon County, Florida, and the Supreme Court of Florida, as to the right of the United States to be paid out of the ample funds remaining in hand, there is no actual controversy before this Court, but only an abstract [redacted] question of law;

(f) That the writ herein is directed to a decree which was not final.

Question (d): If The Deposit Created a Statutory Trust Fund Prior to the Accrual of the Obligations to the United States Could such Trust Fund be Violated by Resort to the Federal Priority Statute? (Prefatory portion of question omitted.)

The deposit with the State Treasurer was made in 1930 (Rec. 311). The earliest claim of the United States, matur-

ed September 15, 1932 (Rec. 295). The securities were segregated and set apart from the general assets of the surety company, and deposited with the State Treasurer under a special statute:

> "Policy holders in other states know that those particular funds are segregated from the mass of property owned by the company, and that they cannot look to them to the prejudice of those for whose special benefit they were deposited." Blake vs. McClung supra.

A valid trust has the attribute of inviolability, as the word "trust" signifies. If valid when made, it is impregnable against the assaults of the creditors of the settlor, and even against the creditors of the cestuis que trustent, if so intended and so expressed. The sanctity of a valid trust is as inviolable as the chastity of a good woman. It is equally as binding as against subsequent creditors as the lien of a mortgage or judgment.

A case similar in principle in support of the above argument is that of State ex rel Rankin vs. Wilbaux County Bank, 281 Pac. 341, with which the case of The American Surety Company -vs- Mullendore, and another case were, apparently, consolidated. In this case the American Surety Company as subrogee of the United States, sought to set up a preferred claim against the Receiver of the Bank The asserted right of priority of American Surety Company, as subrogee of the United States, claiming to stand in the same position as the United States, and entitled to the benefits of the priority statute against a stockholders' liability fund, which was collected pursuant to a Montana statute, was denied. An appeal was taken to the Supreme Court of Montana. That Court held in part as follows:

"This right of priority is not an attribute of sovereignty, but depends on the acts of Congress.

The United States has preference in the payment of its debts, by virtue of Section 3466, under any of the conditions mentioned in the section, but not in the distribution of funds which for any reason do not come within the statute. It establishes priority which is limited to the particular state of things specified in the act.

We think it manifest that the provisions of 3466, supra, relate to the property and assets of the debtor, and have no application whatever to a trust fund created by statute, and in which the bank has no interest. The fund collected under Section 6036, as amended is not an asset of the insolvent bank - - - but is a trust fund collected upon the stock for ratable distribution among *all* who are creditors at the date of the bank's failure.

We are of the opinion that the surety company, as subrogees of the United States, have no priority against the funds in the hands of the receiver of the insolvent bank, on account of the stockholders' liability, for the reason that section 3466, supra, does not give them such a privileged position."

A petition by the American Surety Company for certiorari was denied by the Supreme Court of the United States. 281 U. S. 725, 50 Sup. Ct. 239, 74 L. Ed. 1142. See also: U. S. vs. Musselshell State Bank, 60 Fed. (2d) 157, and the cases therein cited.

The Courts have repeatedly held that the Federal priority statute does not disturb prior liens or valid transfers. In

Davis, Director General of Railroads etc. vs. Michigan Trust Co., 2 Fed. (2d) 194, it is said:

> "The claim of the United States to the asserted priority rests exclusively upon the statute. No lien is created by it. It does not over-reach or supersede any bona fide transfer of property in the ordinary course of business."

In Brent vs. Bank of Washington, 10 Pet. 596, 9 L. Ed. 547, it was held that the preference given to debts due the United States does not affect any conveyance or mortgage executed in the ordinary course of business prior to the time the event took place which gave rise to the right of the United States to priority. In Theluson vs. Smith, 2 Wheat. 396, 4 L. Ed. 271, it was held that where the debtor made a bona fide conveyance of his property to a third person, or mortgaged it to secure a debt, or if his property had been seized under an execution before the right of preference to the United States accrued, the right of priority did not exist. See also: Savings & Loan Soc. vs. Multnomah County, 169 U. S. 421, 18 Sup. Ct. 392, 42 L. Ed. 803; Beaston vs. Farmers Bank, 12 Pet. 102, 9 L. Ed. 1017.

In view of the fact that property set aside, dedicated, or conveyed, under a valid trust, is altogether as binding as a mortgage or any other transfer, and in view of the fact that the Federal priority statute does not disturb such conveyances, liens, or transfers, the conclusion must follow that the Federal priority statute would not abrogate nor affect the priorities of the beneficiaries of the trust fund here under consideration.

Question (e): May a Federal Collection Statute Abrogate, Or Set at Naught, a State Statute Enacted in the Exercise of the Police Power of the State? (Prefatory portion of question omitted.)

The Federal priority statute is not an attribute of sovereignty but depends entirely upon the provisions of the Statute. U. S. vs. State Bank, 6 Pet. 29, 8 L. Ed. 308; Mellon, Director General of Rys. etc. vs. Michigan Trust Co., 271 U. S. 236, 46 Sup. Ct. 511, 70 L. Ed. 924.

The rights of the States to legislate generally for the safety and welfare of their citizens were retained in the States. These rights have been zealously guarded by the people and generally upheld by the Courts. The right to legislate for the safety and security of its people, is doubtless the highest attribute of sovereignty. The Federal priority statute might well be considered merely as a collection statute—admittedly supreme in its proper scope and sphere, but that sphere is not to displace and set at naught valid statutes enacted in the exercise of the police power of a State.

It is not difficult to see that if the claims of the United States had been in excess of Seventy-five Thousand ($75,000.00) Dollars, and if the United States had the right of priority of payment out of said deposit, the Florida claimants would have received nothing and the whole purpose of the State legislation would have been thwarted.

In the original brief of petitioner, seeking the writ herein, facts were argued which do not appear upon the face of the record, as follows:

"At the present time there are various funds, which have been deposited by surety companies in different States for the purpose of doing business within the State, in which the United States is claiming priority. In each instance the surety company is insolvent, and most of the companies have very few, if any, assets other than these state deposits. The claims of the United States against these funds aggregate several millions of dollars, and are now being presented in a number of proceedings in the different States.

When the surety companies requested authority of the United States to write bonds in favor of the Government, it was reasonably represented that these state deposits were part of their assets. If a surety company is permitted to deposit the great bulk of its assets in the funds required by the various States, and if the United States is not entitled to participate in the state deposits, the priority established by Section 3466 will in effect have been destroyed in the surety business."

Although the facts stated in the foregoing excerpt from the brief of the petitioner do not appear in the record, yet, undoubtedly, they are true. If we may be granted the same liberty as that taken by the petitioner, may we not also state the converse; that there are certain receiverships of insolvent surety companies pending in Florida wherein the claims of the United States are in excess of the statutory deposit. So that, if the position urging priority taken by the United States is sustained the entire intent and purpose of the Legislature in requiring the deposit by surety companies will be thwarted.

A different situation would have arisen had the Florida Receiver been in possession of *all* of the assets of the surety company. In that event, the right of priority in the United States would have attached as against all assets not embraced in valid and prior mortgages, or trusts, or covered by prior liens. This right of priority doubtless is enforcible against all unencumbered assets of the surety company in the hands of the domiciliary liquidator, to whom by operation of law an assignment of *all* such assets was required under the statute of the State of New Jersey, Chapter 244, Pamphlet Laws 1931 providing in part as follows:

> " - - - - whenever the Commissioner of Banking and Insurance shall ascertain - - - - that any such insurance company is exceeding its powers, or violating the law, etc. - - - said Commissioner may forthwith take possession of the property and business of such company and retain such possession until such company shall resume business or its affairs be finally liquidated as herein provided."

Since, therefore, the United States has an adequate remedy by enforcing its rights of priority against the assets in the hands of the domiciliary liquidator, and since such course would, do no violence to a valid trust fund, leave unimpaired a salutary police regulation of the State of Florida and eliminate the controversy over the sovereign rights of the National and State Governments; and since the United States possesses, within its borders, the attribute of ubiquity, rendering it as easy for it to proceed to enforce its obligations in New Jersey as in Florida, it would seem that all uncertainties, if any, should be resolved against the contentions of the United States herein.

Question (f): Where Congress has Prescribed the Conditions Upon Which a Surety Company May be Accepted as Surety on Surety Bonds Running to the United States, Can the Federal Government Rightfully Rely Upon Statutes Prescribing the Conditions Upon which Surety Companies May Write Bonds within that State, to the End That the Protection Designed by the State Statute for the Citizens of That State, might be Wholly Consumed by the Federal Government?—(Prefatory portion of question omitted.)

We have hereinabove shown that Congress has enacted legislation for the protection of the Federal Government against insolvent and irresponsible surety companies. These statutes offer no protection to the State of Florida nor its citizens. Congress did not undertake to prescribe the conditions upon which a surety company might qualify to transact business in Florida. Therefore, Florida had the right to, and did, legislate on the subject. There was nothing in either of the respective statutes on the subject in the nature of reciprocity. Each Government looked to its own devices until Florida's device proved to be the more effective. Whereupon, the Federal Government sought to appropriate the benefits of the Florida statute minus the conditions thereof.

The Court held in the case of Andrew W. Mellon, Director General of Railroads etc. vs. Michigan Trust Company, 271 U. S., 236, 46 Sup. Ct. 511, 70 L. Ed. 924, and in the case of United State vs. Guaranty Trust Co., 280 U. S. 478, 50 Sup. Ct. 212, 74 L. Ed. 556, that the indebtedness of railroads to the United States, for money advanced

under the transportation Act, was collectible only under the provisions of that Act, and not under the priority statute. In the latter case the Court said:

> "Moreover, Congress evidenced unmistakably its purpose to rely, for obtaining payment of the Government's advances, upon means other than the priority provided for by Section 3466. Under all of the sections, the giving of adequate security was either required or left to the discretion of the President."

In the matter of surety companies, Congress had legislated to secure the United States against loss. (Sections 1 to 11, Title 6 U. S. C. A. supra). For instance, in section 8, Title 6, U. S. C. A., supra, every surety company must furnish a statement, and must have $250,000.00 paid up capital, and the Secretary of the Treasury must grant authority to the surety company to write bonds. Section 9 requires each surety company to file quarterly statements with the Secretary of the Treasury, and gives the Secretary of the Treasury the power and the duty to revoke the authority of any surety company to transact business whenever in his judgment such company is not solvent. It also specifically provides:

> "He may institute inquiry at any time into the solvency of said company and may require that *additional security* be given at any time by any principal when he deems such company no longer sufficient security."

It would seem, therefore, as in the Guaranty Trust Company case, supra, that: "Congress evidenced unmistakably its purpose to rely - - - upon means other than the priority provided by Section 3466."

Question (g): Since the Federal Government's Right of Priority is Wholly Statutory, Must not the Allegations in the Claims of the United States be Such as to Bring Such Claims Within the Protection of the Federal Priority Statute? (Prefatory portion of question omitted.)

The claims of the United States contain the following material allegations (Rec. 157):

1. They claim preference by reason of:

(a) The lien on those certain assets in possession of the Receiver under the judgment obtained by the United States;

(b) Section 3466 R. G. S. of the United States (Title 31 U. S. C. A. 191).

2. The service of summons on the surety company in scire facias proceedings on an estreated bail bond.

3. The rendition of a final judgment on the dates stated.

4. The filing of a written notice with the State Treasurer under Sections 6302 and 6303 C. G. L. of Florida, thereby creating a specific lien on the bonds and securities.

5. That said surety company was by the laws of New Jersey declared insolvent and placed in liquidation on the 28th of May, 1932.

6. That a temporary restraining order issued by the United States District Court for the Southern District of Florida, temporarily restraining the State Treasurer from disposing of said securities, was dissolved by said court.

The following material allegations in the claims are absent:

(a) They do not allege that the "debtor, not having sufficient property to pay all his debts" made a voluntary assignment.

(b) They do not allege insolvency of the debtor within the meaning of Section 3466 R. S.

(c) They do not allege that the debtor's assets were insufficient to pay all its debts.

(d) They do not allege the commission of an act of bankruptcy by the debtor.

(e) They do not allege that the estate and effects of an absconding, concealed or absent debtor were attached by process of law.

(f) They do not allege any conveyance to defraud, or preference through transfer or through legal proceedings, or general assignment for the benefit of creditors.

(g) They do not allege that the creation of the trust fund by the deposit with the State treasurer was in fraud of creditors, or made when the surety company was insolvent, but on the contrary, they show a recognition of the propriety of the making of the deposit by attempting to collect the judgments in conformity with the requirements of the statute requiring the deposit.

(h) They do not show ownership by the debtor of the trust funds in the hands of the Florida Receiver, which the Receiver holds and administers in right of the State of Florida, and by its authority, but recognize the right of the State, through its Treasurer, to retain the same.

(i) The only allegation as to the insolvency of the surety company is contained in Paragraph III (Rec. 158) of

its claims, wherein it is alleged "said New Jersey Fidelity & Plate Glass Insurance Company - - - *was declared* to be insolvent and was placed in liquidation at the close of business on the 28th day of May, A. D. 1934." (Italics supplied).

Failure to make the omited allegations hereinabove set forth is fatal to the contention of the United States that it has a right to priority under Section 3466 R. G. S., as is clearly clearly shown by the decision of the Court in the case of United States vs. Oklahoma, 261 U. S. 253, 43 Sup. Ct. 295, 67 L. Ed. 638. The position of the respondents in the present case is infinitely stronger than the position of the State of Oklahoma in the case of United States vs. Oklahoma, supra, for the reason that in the Oklahoma case it appeared that all of the assets of the Bank had been taken over by the liquidator. It further appeared that no trust fund had been created long prior to liquidation, while, in the case now before the Court, there never has been a taking over of all the assets of the surety company by the Florida Receiver but only the creation of the trust fund long prior to the receivership, against which trust fund the priority statute would not attach even if the allegations had been sufficient to have called into operation the priority statute.

We also desire to call the Court's attention to the allegations in the claims that said surety company "was declared to be insolvent", but that it fails to allege by whom it was declared to be insolvent, and it must be presumed that it was declared to be insolvent by the Commissioner of Banking and Insurance of the State of New Jersey. The Court held in the case of United States vs. Oklahoma, supra, that a determination by the Banking Commissioner

of Oklahoma was not an adjudication of insolvency as contemplated by the Federal priority statute.

In the decision of this Court, in Conrad vs. Atlantic Insurance Company, 1 Pet. 386, 7 L. Ed. 189; United States vs. Howland, 4 Wheat. 108, 4 L. Ed. 526, and in numerous other cases, it was held that the burden is on the United States to show that the debtor made a voluntary assignment of *all* of his property in order for the priority statute to attach. It is submitted that the United States has failed to allege such a state of facts as calls into operation the priority statute.

See Davis, Director General -vs- Michigan, 2 Fed. (2d), 194, and also the case of Mellon vs. Michigan Tr. Co., 46 Sup. Ct. 511, 271 U. S. 236, 70 L. Ed. 924, affirming the Davis case, supra. The above case also holds that the Government's right of priority under Section 3466 over other creditors does not extend to equity proceedings wherein a receiver is appointed, although the circumstances are sufficient to make such appointment an act of bankruptcy. To the same effect is Beaston vs. Farmers' National Bank of Del. 12 Pet. 102, 9 L. Ed. 1017. The proceeding in the instant case is a proceeding in equity wherein a receiver was appointed.

The obligations of the United States herein all arose out of bail bonds, which are purely penal obligations. We insist that they are not "debts due to the United States", as contemplated by the priority statute. Furthermore, the Receiver alleged (Rec. 189, Par. 8) that the judgments of the United States

> " - - - were obtained upon appearance bonds executed in behalf of persons charged with the violation

of the Federal Prohibition laws, and that since the dates of the execution of bonds, the 18th Amendment to the Constitution of the United States, prohibiting the manufacture, sale or transportation of intoxicating liquors, has been repealed, and by reason thereof, all prosecutions of such cases have been abated, and that the abatement of a prosecution under such circumstances and conditions would have, or should have, the effect of rendering unenforcible an appearance bond executed by a defendant charged with the violation of the National Prohibition laws, and would also abate the collection of a judgment rendered on such a bond, since the defendant in such cases, who is the principal in such bond, could not now be required to appear for trial, and for the Court to penalize the innocent surety on a bond, and thereby the creditors of such surety, when it becomes insolvent, would be inequitable and against the spirit and purpose of our laws."

The United States moved to strike the above quoted language from the answer of the Receiver (Rec 195-197, Par. 7 of Motion), thereby admitting said allegations of the Receiver's answer to be true. The motion to strike said portion of the answer of the Receiver was denied in the order of May 28, 1934 (Rec. 201). Therefore, the said allegations were never denied, but were admitted to be true and were retained in the answer although neither the lower court nor the Supreme Court of Florida expressly passed upon said question.

It is too well established to require the citation of authority that the release of the principal releases the surety. Here we have the anomolous situation wherein the credi-

tors of a surety company are penalized when no penalty can be inflicted upon the offender or the principal.

The claims of the United States are pending in a court of equity, which deals with the substance rather than the form, and whose processes can be called into operation by only such considerations as appeal to a court of conscience. The conclusion that the enforcement of these penal obligations against the creditors of an insolvent surety company, when no recourse is available as against the principal, would be inequitable and unjust seems irresistible.

We are not unaware of the holdings of this Court in the case of United States vs. Mack et al, 295 U. S. 480, 55 Sup. Ct. 813, 79 L. Ed. 1559, wherein the [illegible]eld that a bond conditioned upon the return of a vessel seized under the Federal Prohibition law was enforcible even after the repeal of the 18th Amendment. But, it seems that there are several vital distinctions between that case and the instant case. The former was in the nature of a proceeding in rem. The rights of the United States for the confiscation and sale of the vessel accrued and became fixed before the repeal of the law, and at the time the crew of the vessel entered pleas of guilty. At that moment the United States established its right to the confiscation of the vessel. It had a monetary interest in the vessel. In the instant case the bonds were executed to insure the appearance of the defendants in person in criminal cases for trial, and, upon conviction, to receive the punishment of the Court. There was no monetary consideration involved, but merely the enforcement of a criminal statute. The United States, in the absence of the 18th Amendment to the Constitution, conferring the power upon Congress to prohibit the manufac-

ture, transportation and sale of intoxicating liquors, was without any power in the premises. When this fundamental grant of power was taken away by the repeal of the Amendment, the United States was left utterly without any authority whatsoever. It would seem that if this is true the United States could not call into operation the processes of a court of equity to now enforce penalties provided by a law that no longer exists.

We submit, therefore, that even if we are in error in every other argument herein sought to be presented, and even if we disregard the trust fund feature of the State statute, and even if we consider the assets in the hands of the Florida Receiver as being general assets, yet, the United States, under the showing made, is not entitled to have the benefit of the Federal priority statute.

CONCLUSION

For the above considerations we, therefore, respectfully submit that the decision of the Supreme Court of Florida in this cause should be affirmed.

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APPENDIX

Section 3466 of the Revised Statutes of the United States (U. S. C., Title 31, Sec. 191):

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Section 6302, Compiled General Laws of Florida:

> *Requirements to do business in this State*—Companies herein described, chartered by this State, or other States or foreign Governments, now doing business in this State, or hereafter doing business in this State, which offer or undertake to become surety upon any bond, or surety contract, before being accepted as surety thereon, shall be required to deposit with the Treasurer of this State bonds of the United States, or bonds of any State of the United States, and which amount according to their market value, to seventy-five thousand dollars which bonds shall be receipted for by the State Treasurer and held or deposited by him. And whenever such company ceases to do business in this State, and has settled up all claims against it, as hereinafter provided, and has been released from

all the bonds upon which they have been taken as sureties said bonds shall be delivered up to the proper party on presentation of the Treasurer's receipt for said bonds. While said bonds are so deposited with the Treasurer, the owner of the same shall be entitled to collect the interest on the same. For the bonds so deposited, the faith of the State is pledged that they shall be returned to the party or parties entitled to receive the same.

Section 6303, Compiled General Laws of Florida:

Final judgment against surety company.—Whenever final judgment has been rendered against any surety company on a fidelity or surety bond, said surety shall pay the same within thirty days. Upon notice of failure to pay said amount within said time, the State Treasurer shall retain said bonds, or so much thereof as may be necessary to cover said judgment and costs, subject to the order of the court trying any suit that may be brought upon such bond.

Chapter 16248, Laws of Florida, 1933:

SECTION 1. That Section 4340 of the Revised General Statutes of Florida of 1920, the same being Section 6303 of the Compiled General Laws of Florida 1927, be and the same is hereby amended to read as follows:

"6303 (4340) FINAL JUGMENT AGAINST SURETY COMPANY.

"Whenever a final judgment has been rendered against any surety company on a fidelity, appearance, supersedeas or surety bond, the surety on said bond shall pay the same within thirty days. Upon notice

of failure to pay the amount due under said bond within said time, the State Treasurer shall retain the bonds or securities deposited with him by said surety company under Section 4339 of the Revised General Statutes of Florida of 1920, and acts amendatory thereof, or as much thereof as may be necessary to cover said judgment and costs, subject to the order of the Court trying any suit that may be brought upon said bond: Provided, however, that in the event of the adjudication of insolvency of any such surety company by a court of competent jurisdiction, or in the event its assets should be placed in liquidation in the State of its incorporation, the Court of Chancery, at the seat of Government in Florida shall have jurisdiction, upon bill filed by any party in interest, to take charge of the securities so deposited with the State Treasurer under the provisions of Section 4339 of the Revised General Statutes of Florida of 1920, and acts amendatory thereof, together with any other assets of such surety company, which may be marshaled in the State of Florida, to direct a sale of the said securities at public or private sale and on such terms as the said court deems proper and, after paying all costs and expenses, including reasonable counsel fees incurred in connection with said proceedings, all as allowed by the court, to distribute the proceeds of the sale of said securities proportionally among all of the Florida creditors who may make proof of their claims against any such surety company to the satisfaction of said court, the surplus, if any, to be disposed of by proper order of such court. The said court is empowered to ascertain, as far as practicable, the names and addresses of all Florida creditors and the amounts due

and owing to them under bonds given by said surety company, and to notify the Florida creditors to make proof of their claims and to determine the validity and the amount due each of them. The claims of all Florida creditors of any such surety company not reduced to final judgment prior to the time the said Court of Chancery takes charge of such Florida assets shall participate in the proceeds of the sale of said securities and assets only on a proportional basis with other Florida creditors. Upon the said Court of Chancery assuming jurisdiction of the said securities and assets of such surety company, all actions against the said company and the said securities and assets shall be stayed, pending the further orders of said Court and the State Treasurer, and the State of Florida shall thereby be absolved from any further liability on account of said securities, and the right of said surety company to transact business in this State shall cease and determine.

"SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

"SECTION 3. This Act shall take effect upon becoming a law.

"Approved May 10, 1933."

SUPREME COURT OF THE UNITED STATES.

No. 643.—October Term, 1935.

United States Petitioner,
vs.
W. V. Knott, State Treasurer, et al. } On Certiorari to the Supreme Court of Florida.

[May 25, 1936.]

Mr. Justice Brandeis delivered the opinion of the Court.

The New Jersey Fidelity and Plate Glass Insurance Company is a surety company organized under the laws of that State. In 1932, it became insolvent; was upon its petition placed by a New Jersey court for liquidation in the hands of Kelly, the New Jersey Commissioner of Banking and Insurance; and he sought to take possession of its assets wherever situated. In 1930, the company had deposited securities of the face value of $75,000 with the State Treasurer of Florida in order to qualify there pursuant to Sections 6302 and 6303 of Florida Compiled General Laws. It entered into many surety obligations in Florida prior to its insolvency; but no unsatisfied judgment against it was outstanding there when the New Jersey liquidation proceeding was begun.

Kelly brought suit in Florida against State Treasurer Knott to restrain disposition of the deposited securities except upon order of that court. After the institution of his suit, an amendment to Section 6303 made by Chapter 16248 of the Florida Laws, 1933, provided that in case the assets of a surety company should be placed in liquidation in the state of its incorporation, a Florida court "shall have jurisdiction, upon bill filed by any party in interest, to take charge of the securities so deposited with the State Treasurer" and "distribute the proceeds of the sale of said securities proportionally among all of the Florida creditors who may make proof of their claims", "the surplus, if any, to be disposed of by proper order of such court." Thereupon, a Florida creditor brought suit under the amendment; that suit was consolidated with the one which Kelly had instituted; and a receiver was appointed who took possession of the securities and sold them.

In the receivership proceeding the United States filed, and under Revised Statutes 3466 claimed priority for, a debt of $14,075, that sum being the aggregate of twenty judgments which it recovered against the company in Florida on estreated appearance, or bail, bonds given there. The Florida officials insisted that the claim of the United States must be postponed to those of Florida creditors; the New Jersey commissioner, that priority can be accorded the United States, in any event, only in the domiciliary proceeding. The trial court denied it priority; and directed that debts due Florida, its political subdivisions, citizens or residents, be paid. The decree left undetermined whether the United States was entitled to receive in Florida payment from the residue after satisfaction of such Florida debts, or whether the residue should be transmitted to the domiciliary liquidator. The United States appealed on the ground that it has been denied priority; the New Jersey commissioner on the ground that the domiciliary liquidator was entitled to the residue remaining after satisfying the claims of creditors reduced to judgment prior to the institution of the proceedings in New Jersey. The order of the trial court was affirmed by the Supreme Court, with some modification. *Kelly* v. *Knott*, 163 So. 64. We granted certiorari, because of the importance of the question involved. 297 U. S. —.

First. Revised Statutes, Section 3466, provides that "whenever any person indebted to the United States is insolvent" "the debts due to the United States shall be first satisfied." It is clear that, within the meaning of the section, the company had become insolvent, *Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U. S. 483, 488-490, and that, ordinarily, debts due on judgments recovered by the United States are "debts due to the United States". *Price* v. *United States*, 269 U. S. 492, 499-500. Compare *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 134; *Pierce* v. *United States*, 255 U. S. 398, 401-402. See also *United States* v. *Mack*, 295 U. S. 480. The Florida officials contend that, since the priority accorded the United States depends entirely upon the statutory provision and is not an attribute of sovereignty, *United States* v. *State Bank*, 6 Pet. 29, Congress may deny to the Government the right of priority; and that, by prescribing elsewhere the conditions under which a surety company may write certain surety bonds in favor of the United States, *United States Code, Title 6, sections 1-11*, it has indicated its intention to exclude the liabilities here involved from

the operation of Section 3466. We do not construe the legislation concerning surety bonds as having such effect. The cases relied upon dealt with legislation of a different character. *Davis* v. *Pringle*, 268 U. S. 315; *Mellon* v. *Michigan Trust Company*, 271 U. S. 236; *United States* v. *Guaranty Trust Co.*, 280 U. S. 478. We are of opinion that the claim presented is, in its nature, one entitled to priority.

Second. The main question for decision is whether the Florida statute divested the company's title to the deposited securities or created a perfected lien thereon, so as to give the Florida creditors precedence over the United States.

Section 6302 of the Florida Laws, which required the deposit, declares:

"And whenever such company ceases to do business in this State, and has settled up all claims against it, as hereinafter provided, and has been released from all the bonds upon which they have been taken as sureties said bonds [securities] shall be delivered up to the proper party on presentation of the Treasurer's receipt for said bonds."

Section 6303, as amended, provides:

"Whenever a final judgment has been rendered against any surety company on a fidelity, appearance, supersedeas or surety bond, the surety on said bond shall pay the same within thirty days. Upon notice of failure to pay the amount due under said bond within said time, the State Treasurer shall retain the bonds or securities deposited with him by said surety company . . . to cover said judgment and costs, subject to the order of the Court trying any suit that may be brought upon said bond . . . ." [Then follows the amendment of 1933 authorizing institution of the suit.]

The trial court found that, by the deposit, the securities had been segregated and set apart out of the general assets of the company prior to the accrual of any liens of, or obligations to, the United States. We accept that finding as conclusive of the facts. The Supreme Court declared that the securities deposited by the company with the State Treasurer constituted "a trust fund to be held by him for the protection and benefit of all Florida claimants entitled to seek satisfaction thereout, regardless of the continued solvency of the depositing corporation or its voluntary cessation of business in the State of Florida;" and that, in enacting the legislation requiring such deposit, Florida did so with the intention

of protecting those whom it had the power and duty to protect. It held that the deposit with the State Treasurer constituted a trust fund for the benefit of Florida, its political subdivisions, citizens and residents; that they were entitled to be paid first out of it; and that the United States was not a beneficiary of such trust fund. Insofar as the decision of the Supreme Court is a construction of the statute of the State, we accept it as conclusive.

Third. The question for our decision is the legal effect upon the asserted federal right of the statute so construed. As was said in *Theluson* v. *Smith*, 2 Wheat. 396, 426: "The United States are to be first satisfied; but then it must be out of the debtor's estate. If, therefore, before the preference has accrued to the United States, the debtor has made a *bona fide* conveyance of his estate to a third person, or has mortgaged the same to secure a debt, or if his property has been seized under a *fi. fa.*, the property is divested out of the debtor and cannot be made liable to the United States." See also *Beatson* v. *Farmers' Bank of Delaware*, 12 Pet. 102, 135-136. The deposit of the securities rendered them subject to process within the State; and it may be assumed that the contemplated beneficiaries would have acquired thereby precedence over those claiming under a later voluntary assignment by the company or any later levy. But it is settled that an inchoate lien is not enough to defeat the priority. *United States* v. *Oklahoma*, 261 U. S. 253; *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290. Unless the law of Florida effected, at least as early as the date of insolvency, either a transfer of title from the company, or a specific perfected lien in favor of the Florida creditors, the United States is entitled to priority.

The Supreme Court of Florida holds, in the case at bar, that the amendment, which was not enacted until after the institution of the liquidation proceeding in New Jersey, did not change substantive rights. And in *State* v. *Knott*, 114 Florida 95, 99, also decided after enactment of the amendment, the court describes thus the effect of a deposit:

"The correct interpretation of the statute is that the securities in the hands of the State Treasurer so held in trust by him for the account of the depositing company, are merely segregated assets of the surety company which, while capable of being specifically applied to the satisfaction of such final judgments against the surety com-

pany on fidelity and surety bonds as shall remain unpaid for thirty days, do not become impressed with the judgment lien until after the notice pursuant to which they may be expressly subjected thereto by the order of the court rendering a judgment on a bond executed by the depositing surety company."

Obviously, the deposit did not divest the company's title to the securities. No one was appointed trustee; and, at the time of the deposit, there was no ascertainable beneficiary. Who would share in the proceeds of the securities could not be known until they were exhausted in satisfaction of judgments, or until the entry of the decree of distribution in a suit authorized by the 1933 amendment. While in the case at bar the Supreme Court declared that the deposit created "a trust fund", the term appears to have been used to connote an inchoate general lien for the benefit of those persons who may become entitled to be paid from the proceeds, either as unsatisfied judgment creditors, or as Florida creditors at the time when insolvency supervenes. Such an interest lacks the characteristics of a specific perfected lien which alone bars the priority of the United States.

Fourth. The Florida officials construe the opinion of its Supreme Court as holding that the United States is entitled to be paid in this proceeding from the surplus remaining after payment of the Florida creditors. They urge that from the report of the receiver it appears that such surplus will be adequate to satisfy the claim of the United States; they contend that, hence, the United States is not adversely affected by the judgment under review; and they ask that the judgment be affirmed, or the certiorari be dismissed, on this ground. But no order has been entered in either of the Florida courts directing payment of the surplus to the United States; and, moreover, it is not clear that the surplus, if so applied, would satisfy its claim. As the debt due the United States remains unpaid, the judgment denying it priority prejudices its right.

Fifth. Finally, the Florida officials contend that this Court lacks jurisdiction, because the order of the trial court [that of May 28, 1934] which gave the local creditors priority over the United States, constituted the final order in the case and disposed of the right which the United States is here asserting; that this order was not appealed from; and that the later order of the trial

court [that of October 27, 1934] from which an appeal was taken to the Supreme Court of Florida, was not a final order. We have no occasion to enquire into these matters which are of local concern. The judgment here under review is that of the Supreme Court. It denied to the United States the priority claimed under Section 3466. That denial is a final judgment under the rules governing our jurisdiction. *Ex parte Tiffany,* 252 U. S. 32, 36.

Sixth. The New Jersey commissioner contends that the proceeds of the securities remaining after satisfying the claims of the local creditors must be transmitted to New Jersey; and that the Florida courts are without jurisdiction to award priority to the United States. It is true that the priority statute is not applicable unless insolvency has been manifested by some proceeding equivalent to an assignment of all of the debtor's property, *United States* v. *Oklahoma,* 261 U. S. 253, 262; *United States* v. *Hooe,* 3 Cranch. 73, 91. The priority could not have been asserted in Florida or elsewhere, if there had been no such assignment. But this requirement of the statute was satisfied by the liquidation suit in New Jersey. *United States* v. *Butterworth-Judson Corp.,* 269 U. S. 504. The United States properly intervened in Florida in order to prevent the assets there from being applied in payment of local claims believed to be subordinate to its own. No rule of law precludes it from asserting its priority by an appropriate proceeding in any jurisdiction in which property of the insolvent is being administered. The Florida court did not lack power to entertain its application; and the fact that the claim originated in Florida and was reduced to judgment there, made it appropriate that the United States should seek there satisfaction from funds deposited to assure payment of judgments entered on surety bonds given there by the company. No good reason has been suggested why the United States should be denied the right to secure in this proceeding payment of its debt.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.